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The Delta Stewardship Council intends to adopt an Interim Plan at its meeting of August 27, 2010. There will be three (3) draft versions of the plan prior to the final action; this draft is the third. The Council solicits electronic communications specifically directed to the various drafts of the Interim Plan as described below. All comments will be posted on the Council website, and staff and consultants are directed to review and consider submitted comments in preparation of revised versions of this plan, in addition to testimony delivered at public hearings of the Council. Pursuant to the Council action on May 27, 2010, focused workgroups may be utilized to develop language or alternatives to sections of this plan.

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FINAL DRAFT INTERIM PLAN

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Prepared for consideration by the Delta Stewardship Council

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California Water Code Section 85084

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6

August 16, 2010

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**Not reviewed by or approved by the
Delta Stewardship Council**

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Send comments to interimplan@deltacouncil.ca.gov.

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Comments received by Monday, August 23, will be provided to Council members for their meeting August 26-27. All comments received are posted to the Delta Stewardship Council web site: <http://www.deltacouncil.ca.gov/>

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1 Executive Summary

2 Introduction

3 In November 2009, the California Legislature enacted SBX7 1 (Act), one of several bills passed related to
4 water supply reliability, ecosystem health, and the Delta. The Act, which took effect on February 3,
5 2010, adds Division 35 to the Water Code, the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta
6 Reform Act), and creates the Delta Stewardship Council (Council) as an independent agency of the state.
7 The Act charges the Council “to develop, adopt, and commence implementation of the Delta Plan...”, a
8 comprehensive management plan for the Delta, no later than January 1, 2012.

9 The law also directs the Council to develop an Interim Plan and include recommendations for early
10 actions, projects, and programs. It is the intent of the Council that this Interim Plan provide a framework
11 to fulfill the requirements of the law, taking preliminary steps toward addressing the crisis in the
12 Sacramento-San Joaquin Delta and the water resources and infrastructure of the state of California. The
13 Interim Plan outlines processes the Council would use to develop its recommendations for early actions,
14 projects, and programs in the fourth quarter of 2010. These recommendations subsequently will be
15 added to the Interim Plan during preparation of the Delta Plan.

16 Although no legislative deadline was given, the Council has set August 27, 2010, as the date for adoption
17 of the Interim Plan, recognizing the pressing obligation of meeting the legislative Delta Plan deadline.
18 Work on the Delta Plan has begun while the Interim Plan is being finalized.

19 This is the third draft of the Interim Plan developed for the Council’s consideration. Comments on this
20 draft will be received by the Council at its meeting on August 27, 2010. Once adopted, the Interim Plan
21 may be revised, and specific projects and programs may be added as appropriate.

22 Legislative Findings Concerning the Delta

23 The key legislative findings and declarations of the Delta Reform Act constitute a clear judgment that:

24 The Sacramento-San Joaquin Delta watershed and California’s water infrastructure are
25 in crisis and existing Delta policies are not sustainable. Resolving the crisis requires
26 fundamental reorganization of the state’s management of Delta watershed resources...
27 It is the intent of the Legislature to provide for the sustainable management of the
28 Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply
29 for the state, to protect and enhance the quality of water supply from the Delta, and to
30 establish a governance structure that will direct efforts across state agencies to develop
31 a legally enforceable Delta Plan. (Wat. Code § 85001)

32 Statutory Adoption of Coequal Goals

33 Additionally, the Legislature advanced several broad goals, including the *coequal goals*, a concept
34 central to understanding the Delta Reform Act and the state’s policy for the Delta (Pub. Resources Code
35 § 29702):

36 (a) Achieve the two coequal goals of providing a more reliable water supply for
37 California and protecting, restoring, and enhancing the Delta ecosystem. The
38 coequal goals shall be achieved in a manner that protects and enhances the unique

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1 cultural, recreational, natural resource, and agricultural values of the Delta as an
2 evolving place.

- 3 (b) Protect, maintain, and, where possible, enhance and restore the overall quality of
4 the Delta environment, including, but not limited to, agriculture, wildlife habitat,
5 and recreational activities.
6 (c) Ensure orderly, balanced conservation and development of Delta land resources.
7 (d) Improve flood protection by structural and nonstructural means to ensure an
8 increased level of public health and safety.

9 **Statutory Adoption of Objectives Inherent in Coequal Goals**

10 These coequal goals are further expressed in the eight policy objectives set forth in the Delta Reform
11 Act, which “the Legislature declares are inherent in the coequal goals for management of the Delta”
12 (Wat. Code § 85020):

- 13 (a) Manage the Delta’s water and environmental resources and the water resources of
14 the state over the long term.
15 (b) Protect and enhance the unique cultural, recreational, and agricultural values of the
16 California Delta as an evolving place.
17 (c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a
18 healthy estuary and wetland ecosystem.
19 (d) Promote statewide water conservation, water use efficiency, and sustainable water
20 use.
21 (e) Improve water quality to protect human health and the environment consistent
22 with achieving water quality objectives in the Delta.
23 (f) Improve the water conveyance system and expand statewide water storage.
24 (g) Reduce risks to people, property, and state interests in the Delta by effective
25 emergency preparedness, appropriate land uses, and investments in flood
26 protection.
27 (h) Establish a new governance structure with the authority, responsibility,
28 accountability, scientific support, and adequate and secure funding to achieve these
29 objectives.

30 The Act establishes new policies – including reduced reliance on the Delta in meeting California’s future
31 water supply needs through a statewide strategy of investing in improved regional supplies,
32 conservation, and water use efficiency – and also affirms that the “longstanding constitutional principle
33 of reasonable use and the public trust doctrine shall be the foundation of state water management
34 policy and are particularly important and applicable to the Delta.”

35 **Consideration of Early Actions in the Interim Plan**

36 The Council has the authority to make recommendations on early actions and has initiated processes to
37 advance some early actions discussed in the Act, including defining its role in relationship to the Bay

1 Delta Conservation Plan (BDCP) steering committee and selecting a consultant to provide related advice,
2 and establishing relationships and coordination groups with other federal, state, and local agencies.

3 Recognizing that it will be required to make recommendations on a wide range of activities before
4 adoption of the Delta Plan by January 2012, the Council concluded that the Interim Plan must provide a
5 framework to guide its actions during this period. The Council intends to give highest priority to issues
6 that require consideration regardless other actions involving major ecosystem restoration or
7 conveyance improvements, or decisions made on new bonds.

8 **Uses of the Interim Plan**

9 The Interim Plan is intended to provide a framework for early actions and inform Council responsibilities
10 and recommendations, while providing a linkage and smooth transition to the Delta Plan.

11 **Framework for Early Actions**

12 The Interim Plan outlines processes the Council will use to develop its recommendations for early
13 actions, projects, and programs. The Interim Plan can also inform the work of other agencies as the
14 Delta Plan is developed. Early actions identified in the Act include:

- 15 • Delta flow criteria assigned to the Department of Fish and Game (DFG) for recommendations and
16 the State Water Resources Control Board (SWRCB)
- 17 • Responsibilities of the Department of Water Resources (DWR), including efforts to cooperate in the
18 construction and implementation of the Two-Gates Fish Protection Demonstration Project by
19 December 1, 2010; evaluating the effectiveness of the Threemile Slough Barrier project; proceeding
20 with other near-term actions as identified in the *Delta Vision Strategic Plan*; and assisting in
21 implementing early action ecosystem restoration projects, including tidal marsh restoration in Dutch
22 Slough and on Meins Landing
- 23 • Preparation of a proposal to coordinate flood and water supply operations of the State Water
24 Project (SWP) and the federal Central Valley Project (CVP), for which DWR has lead responsibility
- 25 • Council review of the report of the Delta Protection Commission (DPC) regarding potential changes
26 in the Primary and Secondary Zones of the Delta, in light of the coequal goals and the mandates of
27 the Act
- 28 • Completion of the economic sustainability plan by the DPC no later than July 1, 2011
- 29 • Development of the DPC's proposal "...to protect, enhance, and sustain the unique cultural,
30 historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a
31 manner consistent with the coequal goals"

32 **Inform Council Responsibilities and Recommendations**

33 The Interim Plan informs the Council with advice to—or review of the recommendations of—other
34 agencies, including advice to local and regional planning agencies, and review and approval of
35 Proposition 1E expenditures for selected projects.

36 Additionally, the Interim Plan includes important organizational and procedural matters that will assist
37 the Council in its role as a responsible agency in development of the environmental impact report (EIR)

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1 for BDCP and potentially as an appellate body regarding the DFG determination of whether BDCP has
2 met criteria specified in the Act.

3 The Council will be asked to comment on projects and plans affecting the Delta that are undergoing
4 environmental review, and those reviews should be based on the full range of policy objectives and
5 responsibilities included in the Act. Draft procedures for this are included in Appendix A.

6 **Provide Linkage to the Delta Plan**

7 The Interim Plan provides a foundation for transition to the Delta Plan, and a framework for Council
8 operations until the Delta Plan is adopted. Although the Council will make no regulatory action under
9 the framework provided by the interim Plan, its recommendations must be consistent with the Act. The
10 Council work processes described and defined by the Interim Plan should continue with minimal
11 modification in the Delta Plan. The relationships developed with other agencies under the Interim Plan
12 should remain effective as the Delta Plan is implemented.

13 **Interim Plan Processes**

14 Section 3 of the Interim Plan outlines procedures and process the Council will use. The intent is that
15 many elements of the Interim Plan can carry forward to implementation of the Delta Plan and serve to
16 structure the Council's work in developing the Delta Plan. To effectively meet its responsibilities and
17 manage its work flow, the Council will develop:

- 18 • Provisions for amendment at the Council's discretion
- 19 • A plan to engage agencies whose activities are related and affected by the requirements of SBX7 1
20 with the goal of effective communication of the activities of the Council under the Act
- 21 • Formalized procedures for core responsibilities of the Council, including reviews of proposed actions
22 and plans (Appendix A includes adopted procedures for Council meetings, procedures for bringing
23 actions before the Council, and three draft procedures for required appeals and reviews.)
- 24 • A formal annual or biannual work plan to provide the structure by which the Council uses its
25 resources most effectively and manages relationships with others to achieve its goals
- 26 • Structured decision processes, which may vary by categories of decisions

27 In addition, Council decisions will adhere to these principles and procedures:

- 28 • The Council will hear “conceptual” proposals as informational items at its discretion but will not act
29 on conceptual proposals nor will the Council issue “in concept” approvals.
- 30 • Robust procedures will be used to ensure transparency and adequate opportunities for interested
31 parties and the public to participate in decision making, including availability of information related
32 to a decision well before the meeting at which it is considered.
- 33 • The Council will use the best available science.
- 34 • Any project or decision will be considered against all eight policy objectives in accordance with basic
35 legal authorities as summarized by Appendix D.

- 1 • The Council will consider technical and legal feasibility, consistency or conflicts with other programs,
2 and ability to implement in timely manner for a specified schedule.
- 3 • The seven framework tools (described below) will serve as a basis for analysis and development of
4 performance measures.
- 5 • The Council is committed to making progress on all eight policy objectives over roughly similar time
6 frames, with roughly equivalent certainty regarding effectiveness.
- 7 • The Council will issue specific written findings and decisions as required by law or otherwise within
8 its discretion.

9 **Council Review Process for Early Actions (Wat. 10 Code § 85084)**

11 The Council establishes processes to consider early actions, starting with those listed in Water Code
12 sections 85080 through 85087 and then those meeting the urgency criteria described in the legislative
13 history of SBX7 1. Early actions should be considered in public hearings of the Council or by a committee
14 of the Council in September, October, and November 2010. Proponents of an early action will be asked
15 to complete an application form adopted by the Council intended to provide the information on which
16 the committee would make its recommendation for the Council. Appendix B contains a potential
17 application form.

18 A recommendation by the Council for early action is intended to address the urgency of the Delta crisis,
19 and does not exempt that action from the definition of "covered action" or the provisions governing the
20 consistency of state and local public agency actions with the Delta Plan, once it is adopted (Wat. Code §
21 85225 et seq.).

22 **Analytical Tools for Council Action under the 23 Sacramento-San Joaquin Delta Reform Act of 2009**

24 Section 5 provides a framework for organizing available information as a basis for Council action in a
25 wide range of activities under the Interim Plan. The framework relies on seven tools with which to
26 organize and assess critical information:

- 27 • **Delta water flows.** The Delta flow criteria developed by the SWRCB with contributions of the DFG
28 will be one of the early considerations of Delta water flow by the Council. Over time, additional
29 information will be added.
- 30 • **Delta ecosystem restoration plan.** Actions taken to restore the Delta ecosystem are expected to
31 include at least changes in water flows, water quality, and land forms and uses. The CALFED
32 Ecosystem Restoration Program provides tools and processes for evaluating and guiding decision
33 making about restoration actions under the Interim Plan. These include the program's Strategic Plan
34 and the Delta Regional Ecosystem Restoration Implementation Plan conceptual models. The *Delta*
35 *Vision Strategic Plan* includes approximately 40 ecosystem performance measures organized around
36 five policy strategies. To the extent possible, these (or other) measures of ecosystem function can
37 be combined into summary indices.

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- 1 • **Indicators of progress in meeting California's future water supply needs on a regional basis.** This
2 tool is intended to summarize progress in satisfying Water Code section 85021, which states: "The
3 policy of the State of California is to reduce reliance on the Delta in meeting California's future water
4 supply needs through a statewide strategy of investing in improved regional supplies, conservation,
5 and water use efficiency. Each region that depends on water from the Delta watershed shall
6 improve its regional self-reliance for water..." This will require information about the regional
7 efforts, and information developed by DWR could provide a conceptual starting point.
- 8 • **Current levee system integrity.** All current human uses of the Delta require a certain level of
9 protection against river flooding, sea level rise, and earthquakes. The Council must ensure progress
10 toward development of a levee system policy that matches the uses and resources at risk with
11 public policy purposes now enshrined in law. Pending the development of more detailed
12 information on levee conditions and policies, this Interim Plan uses the levee classification system
13 developed by DWR and others as a conceptual starting point.
- 14 • **Map of planned Delta land uses.** One of the primary goals of the Act is to achieve more effective
15 integration of land use policies in the Delta. Many plans and projects can affect the land forms and
16 land uses in the Delta, including work on flood management policies affecting levees; flood ways
17 and allowable land uses; patterns of land use allowed under the policies of the DPC and local
18 governments; ecosystem restoration projects; improved water conveyance; and other infrastructure
19 investments. Among the existing plans shaping land uses in the Delta are county and city general
20 plans and zoning, county Habitat Conservation Plans, and the DPC Land Use and Resource
21 Management Plan, among others. The Council intends to develop a map of existing Delta land uses
22 as a tool to begin to show and integrate the effects of land use policies.
- 23 • **Finance plan.** The Act does not address financing operations of the Council, the Delta Conservancy,
24 or the DPC, nor does it provide financing for actions recommended by these bodies. The issue of
25 adequate financing must be addressed. The Interim Plan can make progress on two important
26 beginning points in a finance plan: (1) beginning to develop accurate and complete information on
27 current finances and (2) initiating discussion of long-term financing to support activities under the
28 Act.
- 29 • **Incorporation of science.** Use of "best available science" or "best available scientific information" is
30 required in the Act and the two terms are treated equivalently here. In Section 5, the role of science
31 as a tool and the roles of the Delta Science Program and Delta Independent Science Board are
32 discussed. Procedures for the use of best available science in decision making of the Council are
33 considered in Section 3.
- 34 These seven tools focus on core responsibilities of the Council to achieve the coequal goals and organize
35 much of what will be required for decision making. They do not include all elements required for Council
36 action. None of the tools will be fully developed by August 27, 2010, when the Interim Plan is scheduled
37 to be adopted by the Council. However, they will inform Council work under the Interim Plan and may
38 be amended over time.

39 **Conclusion**

40 In adopting this Interim Plan, the Council conveys its commitment to meeting its obligations under the
41 Delta Reform Act.

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1 The Council seeks strong working relationships with agencies and stakeholders in developing an
2 effective Delta Plan that can also serve as many of its missions and goals as possible within the scope of
3 the Act. Important components of those effective working relationships are procedures that ensure
4 transparency and robust procedures for early consultation.

5 Finally, implementation of the Interim Plan requires full consideration of public input. Opportunities
6 have been and will continue to be provided for the public to engage in the development and
7 implementation of the Interim Plan.

8 **Organization of the Interim Plan**

9 This Interim Plan is organized in five sections, following the Executive Summary:

- 10 • Executive Summary
- 11 • Section 1. Introduction
- 12 • Section 2. Uses of the Interim Plan
- 13 • Section 3. Interim Plan Processes
- 14 • Section 4. Council Review Process for Early Actions (Wat. Code § 85084)
- 15 • Section 5. Tools for Council Action under the Sacramento-San Joaquin Delta Reform Act of 2009

16 A list of acronyms and abbreviations used in this Interim Plan is included at the end of Section 5,
17 preceding the appendices.

18 This draft Interim Plan includes five appendices:

- 19 • Appendix A includes Council administrative policies and procedures.
- 20 • Appendix B provides an Early Action review process for review of applications by the Council.
- 21 • Appendix C lists “Council-approved Actions,” which will provide a legal record of actions by the
22 Council until the Delta Plan is adopted. This will include specific early actions, projects, and
23 programs that the Council believes should move forward while the Delta Plan is being adopted. The
24 Council-approved actions may be modified as the Council develops the Delta Plan.
- 25 • Appendix D lists the basic legal authorities of the Council, organized by policy objective (Wat. Code §
26 85020).
- 27 • Appendix E lists strategies and actions from the *Delta Vision Strategic Plan* and other sources for
28 consideration by the Council in development of the Delta Plan.

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1 Section 1. Introduction

2 In November 2009, the California Legislature enacted SBX7 1 (Act), one of several bills passed at this
3 time related to water supply reliability, ecosystem health, and the Delta. The Act became effective on
4 February 3, 2010. The Act adds Division 35 (commencing with § 85300) to the Water Code. This division
5 is known as the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act). The Act creates
6 the Delta Stewardship Council (Council) as an independent agency of the state (Wat. Code § 85200).
7 SBX7 1 also revises the Public Resources Code (§ 29702 through 29780, and adds Division 22.3)
8 specifying changes to the Delta Protection Commission (DPC) and creating the Delta Conservancy. The
9 Act charges the Council with the development of a Delta Plan, a comprehensive management plan for
10 the Delta, by January 1, 2012. Water Code § 85084 directs the Council to first develop an Interim Plan
11 and include recommendations for early actions, projects, and programs. It is the intent of the Council
12 that this Interim Plan provide a framework to fulfill the requirements of section 85084, taking
13 preliminary steps toward addressing the crisis in the Sacramento-San Joaquin Delta and the water
14 resources and infrastructure of the state of California. The Interim Plan outlines processes the Council
15 could use to develop its recommendations for early actions, projects, and programs in the fourth
16 quarter of 2010. The final recommendations will subsequently be added to the Interim Plan.
17 The Council considered the Interim Plan outline and three draft versions of the Interim Plan in the
18 development of the adopted Interim Plan. Verbal and written comments received by the Council on the
19 outline and first and second draft versions were greatly appreciated and were considered in
20 development of this third version of the Interim Plan. Once adopted, revisions to the Interim Plan will be
21 considered by the Council as needed.

22 Background

23 Formed by the confluence of the state's two longest rivers—the Sacramento and the San Joaquin—the
24 Delta is one of the most valuable and unique natural resources in the state and nation. Over the past
25 120 years, demands for water and land resources have become more competitive between ecosystem
26 resources, agricultural users, municipal and industrial users, power generators, and flood management
27 operations in the watershed and salmon fishermen outside the Delta. Nearly two-thirds of the state's
28 population relies on the Delta watershed for all or part of its drinking water. Much of California's
29 irrigated agriculture is dependent on water from the Delta watershed and so too is the state's iconic
30 salmon fishery. The Delta is home to more than half a million residents. The many islands and
31 waterways form important habitat for hundreds of plant and animal species. Additionally, tourism and
32 recreation opportunities draw visitors to the estuary from around the state and the world. The Delta
33 also contains major infrastructure of statewide importance, including aqueducts, natural gas pipelines,
34 electricity transmission lines, railroads, shipping channels, and highways.

35 Despite the Delta's importance, the challenges of effectively addressing both water supply and
36 ecosystem needs have led to increased conflicts over time. Even with the passage of the federal and
37 state Endangered Species Acts, ever-more-rigorous water quality laws, and federal and state
38 environmental protection acts, the natural resources of the Delta have not been effectively protected,
39 nor are reliable supplies of water being provided for California. The challenges in meeting these often-
40 competing uses are compounded by new scientific information suggesting increased risks from climate
41 change, which is causing sea level rise—changing water levels and salinity in the Delta—and the
42 potential for increased flooding along Delta rivers. This new science also indicates the risk of major

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1 seismic events, with the potential to cause devastating impacts on public health, safety, and welfare, is
2 greater than previously understood.

3 Some examples of these challenges are highlighted in the following discussion.

4 **Declining Water Supply Reliability and Water Quality**

5 The *California Water Plan Update 2009* states that "California is facing one of the most significant water
6 crises in its history--one that is hitting hard because it has many aspects and consequences. Reduced
7 water supplies and a growing population are exacerbating the effects of a multi-year drought. Climate
8 change is reducing our snowpack storage and is increasing sea level and floods." Despite evidence of
9 efficiency improvements, technological advancements, and increased attention and action by
10 policymakers, more water must be conserved to meet tomorrow's demands, as well as to ameliorate
11 today's water shortages and the Delta ecosystem's declining conditions.

12 Much of the state's water supply infrastructure, including the Central Valley Project (CVP) and the State
13 Water Project (SWP), were designed, approved, and constructed without any policy requirement to
14 consider or address impacts on ecosystems or other uses dependent on changed water flows, such as
15 the ocean salmon fishery. Moreover, some storage and conveyance facilities projected in early plans
16 were never constructed. Additionally, the available water appears to be overpromised and the state's
17 system to regulate water rights and even to have accurate information on water uses is inadequate.¹

18 These factors create conditions in which meeting expectations for water deliveries are very challenging
19 which the Delta Vision Strategic Plan summarized as follows:²

20 The State Board reports that the face value of existing water rights permits in the Delta
21 watershed is more than eight times the average annual unimpaired flows in the
22 watershed.³ Face values overstate actual water use for several reasons, but noting that
23 pre-1914 and riparian rights are additional to these numbers suggests that the water
24 resources of the Delta watershed are greatly over subscribed. The State Board also has
25 4.2 million acre-feet of new water rights applications pending in the watershed—the
26 equivalent of more than two-thirds the water that passes through the Delta annually.⁴
27 While some of these applications will not be pursued and others are unlikely to be
28 approved, the level of existing demands further illustrates how acute the call on Delta
29 water will be in future.

30 The California Constitution establishes the principles of beneficial use and no waste or unreasonable use
31 as foundations of state water policy:

32 It is hereby declared that because of the conditions prevailing in this State the general
33 welfare requires that the water resources of the State be put to beneficial use to the
34 fullest extent of which they are capable, and that the waste or unreasonable use or

¹ State Water Resources Control Board. Water Rights Within the Bay-Delta Watershed. September 26, 2008. Provided to the Delta Vision Blue Ribbon Task Force.

² . Delta Vision Blue Ribbon Task Force. 2008. *Delta Vision Strategic Plan*. page 17.

³ . State Water Resources Control Board. September 2008.

⁴ . State Water Resources Control Board. June 2008.

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unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Article 10.
Section 2.

Water Code section 10608 reflects this constitutional requirement. Water is a public resource protected by the California Constitution against waste and unreasonable use. Water use efficiency programs have been considered an effective tool for more than 30 years to increase water supply reliability, reduce dependence on Delta water supplies, and, more recently, to reduce energy use for conveyance and treatment. A statewide public education program, Save Our Water, educates water users about the limited water supply and encourages water use efficiency. The California Urban Water Conservation Council and the Agricultural Water Management Council are actively participating in the implementation of SBX7 7 to develop criteria and methods through a public process to attain increased water use efficiency.

Delta water quality is also important to support a wide range of beneficial uses from ecosystem habitat to water supplies to recreation. The needs of these beneficial uses vary widely. Water quality in the Delta is highly variable and influenced by inflows from the rivers, seawater intrusion and tidal action, and general water circulation that is influenced by channel geometry and diversions by local agencies and the SWP and CVP. Compounds are introduced into waters that flow through the Delta from general runoff in the watershed, agricultural drainage and flows, stormwater and wastewater discharges, industrial diversions and discharges, and groundwater inflow into the Delta waters. Some aquatic species remove and/or contribute compounds that may be beneficial or harmful to Delta beneficial uses. The tidal cycle mixes saline, brackish, and fresh waters twice daily, and the mixing zone can extend for miles into the Delta, especially during periods when inflows from the tributaries are low.

Water quality has been a concern in the Delta since the late 1880s, when water users considered methods to reduce the adverse impact of high salinity intrusion into the central Delta near Antioch and the south Delta near Stockton and Manteca. Studies conducted over the past 120 years to reduce the impacts of salinity on municipal, industrial, and agricultural users have considered saltwater tidal gates near Suisun Bay, methods to improve water circulation in the Delta, and facilities to convey water from the Sacramento River to the San Joaquin River.

Examples of water supply and quality concerns include:

- Water quality is likely one significant limiting factor in overall ecosystem health. Agricultural drainage, wastewater discharge, toxins, pollutants, and low dissolved oxygen levels have all been found to damage habitat quality for various aquatic organisms. Current salinity patterns may be enabling the survival of non-native species that are not adapted to the Delta's formerly more variable seasonal salinity. Salinity patterns in the South Delta have been altered sufficiently that at times there is a "reverse" salinity gradient between the Central Delta and San Joaquin River, where it is saltier east of the Central Delta toward the San Joaquin River discharge than it is toward the westward ocean. This salinity gradient reversal has the potential to confuse seaward-migrating fish.
- Other likely significant limiting factors for ecosystem health are water flows and the timing of those flows. Over the past several decades, studies have incorporated flows, including reverse flows in Old

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1 and Middle rivers, and the effects on salinity and turbidity. Recently, studies have been initiated to
2 identify the effects of potential other stressors on beneficial uses of the aquatic habitat and water
3 supplies.

- 4 • Projections for climate change indicate that temperatures and sea levels will rise throughout
5 California. The sea level rise will increase salinity intrusion into the Delta. These changes could
6 reduce available water supplies from the tributaries, likely will require changes to the regulatory and
7 operating criteria for flows to be released from reservoirs to maintain water quality for the
8 ecosystem and agricultural users, and modify use of specific areas in the Delta by aquatic species
9 that could further reduce the usefulness of the SWP and CVP southern Delta intakes.
- 10 • Overall urban water use has doubled over the last 40 years as a result of growth in several urban
11 sectors, including population, landscape irrigation, and industry. In 2009, the Department of Water
12 Resources (DWR) estimated that, under current population and use trends, overall urban demand
13 will increase 72 percent by 2050.⁵ In the *California Water Plan Update 2009*, DWR discusses
14 methods that could be used to reduce this projected increase in urban water use in accordance with
15 the provisions of SBX7 7.

16 Declining Ecosystem Health

17 The Delta ecosystem has been dramatically altered from its pre-Gold Rush conditions by many factors.
18 Additionally, sudden events such as an earthquake or flood could dramatically alter the physical habitat
19 of the Delta by destroying levees, with unpredictable effects. More gradual changes, such as sea level
20 rise, rising water temperatures due to climate change, or additional invasions of exotic species, also
21 could transform the current ecosystem in ways that are difficult to anticipate or manage, thus
22 complicating the prospect of restoration.

23 Throughout most of the Delta and Suisun Marsh, land and water are separated by levees. This is a
24 profound change from past eras, where water followed many natural channels and overtopped natural
25 banks at high flows across virtually the entire Delta. Most ecosystem processes of the past relied upon
26 periodic pulses of tides, fresh water, and nutrients across the landscape at varying frequencies and
27 intensities, driven by tides or seasonal, high river flows. The Delta of today, by contrast, is largely a
28 channelized system, where farmlands, homes, and infrastructure are protected from water by levees,
29 preventing these ecologically productive mixtures. Partly because of this separation of land and water,
30 some of the Delta landscape has subsided as much as 25 feet below sea level, making its restoration to a
31 pre-Gold Rush tidal marsh condition (even if judged desirable) physically infeasible. Examples of
32 ecosystem health concerns and considerations include:

- 33 • Inflow patterns from the rivers have been sharply altered by the construction of large dams on most
34 of the tributaries and the associated water project operations. These changes have also reduced the
35 magnitude of channel-forming flood flows that formerly deposited sediment and altered channel
36 configurations throughout the Delta.

⁵ (1) DWR and California Department of Food and Agriculture. "Current Water Use Efficiency Policy and Programs and Estimate of Agricultural and Urban Water Use." Report prepared for the Delta Vision Blue Ribbon Task Force, 2008. (2) Groves, Matyac, and Hawkins. "Quantified Scenarios of 2030 California Water Demand." Prepared for the California Water Plan Update 2005.

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- 1 • The construction of numerous cross-cut canals in the Delta may have had the effect of
2 homogenizing aquatic ecosystems by reducing the physical habitat diversity of channels and limiting
3 the residence time of certain key nutrients and other ecological resources.
- 4 • Entrainment of fish, eggs, larvae, and nutrients occurs in the south Delta intakes of the SWP and CVP
5 pumping plants. As pumping rates increase, the effectiveness of the ebb tide to move fish away
6 from the pumping plants decreases. Entrainment also occurs at other water diversion points
7 throughout the Delta. Although the individual capacity of each diversion as compared to the SWP
8 and CVP pumping plants is small, the total peak diversions at these approximately 1,800 other
9 points are substantial and should be addressed.
- 10 • There has been a sudden and dramatic crash of several pelagic (i.e., open-water) fish species in the
11 last decade. The causes of this crash are disputed, but likely include, in some combination, the
12 monopolization of the food chain by non-native species, the historically high levels of water export
13 through the major south Delta pumps in the last two decades, changes in the direction and
14 seasonality of flow patterns in the Delta, the introduction of toxins and other pollutants into the
15 Delta through river inflows, and the accumulated loss of food production, breeding, and rearing
16 habitat.
- 17 • The aquatic ecosystem of the Delta is now dominated by invasive species, to the detriment of
18 increasingly endangered native species such as the delta smelt. Some studies have found that
19 benthic (i.e., bottom-dwelling) biomass in the Delta is 95 percent composed of non-native species,
20 and the Delta has been characterized as one of the most invaded estuaries in the world.
- 21 • Changes in flows, aquatic habitat, and water quality have led to regulatory requirements to protect
22 threatened and endangered species listed under the federal and state Endangered Species Acts.
23 Biological opinions, court orders, species recovery plans, mitigation plans, and conservation plans all
24 seek to improve conditions for the fish and wildlife that depend on the Delta.
- 25 • The Delta is still home to a wide variety of birds, mammals, reptiles, and amphibians, including
26 threatened and endangered species, but all of these animals must exist within smaller patches of
27 habitat than in previous eras. The Suisun Marsh alone contains more than 10 percent of California's
28 remaining wetlands, and is a critical wintering and nesting area along the Pacific Flyway.

29 **Threats to the Delta Communities and Economy**

30 The Delta is a significant region with a distinctive social, cultural, and natural heritage. The Delta's
31 predominant land use is agriculture, especially within the Primary Zone defined by the Delta Protection
32 Act of 1992. The Primary Zone also contains small unincorporated communities and "legacy
33 communities," or towns with distinct natural, agricultural, and cultural heritage described in Public
34 Resources Code section 32301(f). These possess a rural charm and include cultural events, specialty local
35 businesses, and nearby recreational opportunities that are attractive to many visitors. The Secondary
36 Zone encompasses a large area ranging from West Sacramento in the north, to Stockton in the
37 southeast, and Pittsburg in the west. This area includes historic urban communities with numerous
38 commercial and industrial businesses that serve agricultural and suburban communities, and rely on the
39 Delta for high quality water supplies and navigable waters to efficiently transport goods and materials.
40 Examples of concerns and considerations include:

- 41 • The Delta Protection Act also created the DPC, and it requires that land development proposals
42 within the Delta Primary Zone be consistent with the DPC's Delta Resource Management Plan. Since

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the passage of the Delta Protection Act, no new tract-scale housing development has occurred within the Primary Zone, much of which is deeply subsided and at high flood risk. Future economic development in the Delta, including residential development proposals, must continue to recognize the inherent risks in primary-zone development proposals, and even many secondary-zone proposals. Some past and pending development projects in the Secondary Zone are in locations that could compromise flood protection for existing Delta islands and residents by constraining floodways and limiting flood-fighting options.

- The Delta also contains major infrastructure of statewide importance, including aqueducts, natural gas pipelines, electricity transmission lines, railroads, shipping channels, and highways. The potential cost of a mass failure of this infrastructure to the state's economy is difficult to estimate, but is certainly in the tens of billions of dollars.
- For the agricultural and municipal economy to improve, the region needs to build wastewater and water treatment facilities and other infrastructure to meet recent and future regulatory requirements.
- The Delta has a well-established recreation industry, including boating, fishing, and other activities.
- Agricultural economic development is threatened by the uncertainty of policies, regulations, and investments related to Delta levee improvements.

Unreliable Storage and Conveyance

The Delta is important to a wide range of water-related benefits to all of California from in-stream, riparian, and tidal marsh ecosystem habitat; drinking water supplies to more than 25 million California residents; and irrigation water supplies for lands in the Central Valley, South Bay Area, Central Coast, and Southern California. These benefits to urban, agricultural, and environmental water users depend on a reliable water conveyance system and statewide storage system. Despite these benefits, the California Legislature concluded that California's water infrastructure was in crisis (Wat. Code § 85001(a)).

Discussions of improved and more reliable conveyance of captured water through or around the Delta are long-standing. Among others, reports by the DWR, the Bureau of Reclamation (Reclamation), and the Department of Fish and Game (DFG) addressed this issue. In the 1960s, the Peripheral Canal was proposed, but it ultimately was rejected by the voters of California in 1982. During preparation of the CALFED environmental impact report/environmental impact statement (EIR/EIS), alternative conveyance options were considered after completion of studies and implementation of pilot studies to improve water supply reliability and water quality for central and southern Delta water users and the SWP and CVP. Over time, new policies and court decisions affected timing and volume of exports.

- These policies and court decisions have restricted both quantity and timing of diversions by the SWP and CVP southern Delta intakes, especially when anadromous fish and estuarine fish are present near the intakes near the Old River system of the San Joaquin River.
- Prior to development of water resources facilities, anadromous fish were attracted upstream during storm events from fall through the spring. The storm flows also provided pulse flows to move fish downstream from the upper reaches of the streams and high flows to reduce salinity intrusion into the Delta. Development of water storage and conveyance facilities modified the flow patterns by shifting peak river flows from fall through spring months to summer months. Construction of levees

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1 eliminated many wetland and shallow water zones where spawning and rearing of estuarine species
2 occurred. Levee maintenance programs also eliminated riparian vegetation that provided shade for
3 temperature control and protection from ultraviolet radiation. These changes affected anadromous
4 fish species and Delta water quality patterns. Operation of the SWP and CVP pumping plants in the
5 Delta also changed flow patterns in the central and southern Delta.

- 6 • A portion of the water released from upstream SWP and CVP reservoirs is currently used to meet
7 regulatory requirements. The amount of flow used to maintain the salinity objectives also reduces
8 the amount of water available for export by the SWP and CVP facilities.
- 9 • Some climate change projections indicate the likelihood of more frequent and intense storm events.
10 These conditions in conjunction with the aging levee conditions increase the risk of levee failure,
11 especially during storm and seismic events. Massive levee failures could be difficult to repair and
12 cause saltwater intrusion into the Delta that could only be reversed over a long period of time using
13 high volumes of fresh water from upstream reservoirs or storm events. Increased salinity would
14 substantially degrade the Delta aquatic habitat, Delta water supplies, Delta agriculture, and
15 recreation.
- 16 • Additional storage, both upstream and downstream of the Delta, and improved water conveyance
17 facilities could provide flexibility for water operations to provide a reliable water supply for
18 agricultural and municipal and industrial water users. Upstream storage could provide benefits for
19 storage of flows during flood events that could later be released to meet Delta inflow and outflow
20 requirements and local and statewide water supplies. Downstream storage could provide flexibility
21 to store water that would be diverted from the upstream area and/or the Delta during high flow
22 events for later use. Currently, many areas that use SWP and CVP water do not have adequate water
23 storage south of the Delta to provide water supplies for extended periods of time if the Delta water
24 conveyance was disrupted.
- 25 • Water supply limitations also occur due to institutional and conveyance constraints. The need for
26 water transfers frequently is not identified until the spring season, when it becomes apparent that
27 there will not be additional storms to replenish water reservoirs or groundwater. By that time, it is
28 difficult to implement water transfers in a timely manner for the irrigation season due to regulatory
29 requirements. Institutional requirements related to the need to obtain regulatory approvals for
30 water users to use other water agencies' conveyance facilities also have caused delays in providing
31 water to respond to water shortages. Recently, several programs, including the Delta-Mendota
32 Canal/California Aqueduct Intertie, have been initiated to improve interagency use of water supply
33 facilities.

34 **Increasing Risks to People, Property, and State Interests**

35 The risks to people, property, and state interests in the Delta stem from failures and overtopping of
36 levees that protect land areas and define water channels within the Delta, and from inadequate
37 emergency management mitigation, preparedness, and response and recovery capacity given the risks
38 in the Delta from floods and other emergencies such as fire.

39 Levee failures can occur during high Delta water inflow, earthquakes, and even undetected levee
40 problems during normal conditions. Levee failures not only create direct damage and potential loss of
41 life from flooding, but also change the configuration (water and land) of the Delta and mixing of fresh
42 water with salt water. These temporary or long-term changes influence water supply, the ecosystem,
43 and other Delta uses. Climate change is likely to compound the risk of levee failures from increases in

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1 storm runoff to the Delta and from a rise in sea level that will place more pressure on Delta levees,
2 unless the levees are substantially improved to accommodate these changes. The potential for
3 catastrophic failures of many Delta levees simultaneously has only recently been analyzed quantitatively
4 and is not yet addressed by a policy for sustainability.

5 Beyond the risk of actual levee failures, the annual high water and high wind events in the Delta require
6 local reclamation districts to conduct emergency levee patrols and flood fights to address levee
7 overtopping issues. These events create considerable costs and, if not adequately addressed, can lead to
8 extensive damage and even to a levee failure. If the challenge is beyond local capability, county, state,
9 and/or federal emergency assistance may be requested.

10 Some pertinent facts that influence risk of Delta levee failures include:

- 11 • The main flood management facilities include about 1,100 miles of levees in the Delta and about
12 230 miles of levees in the Suisun Marsh and the Yolo Bypass. Delta flood management is also
13 affected by levees, bypasses, and dams in the upstream watershed.
- 14 • Because the Delta is an estuary with substantial amounts of land below sea level, water is constantly
15 exerting pressure against those levees protecting lands below sea level. Therefore, levees can fail at
16 any time for various reasons, including the burrowing activities of animals, long-term erosion (from
17 high flow events, wind-induced waves, and boat wakes), seepage along imbedded objects (such as
18 pipes), seepage through sand layers in the levees or in underlying levee foundations, increased
19 water pressure caused by island subsidence, deferred maintenance, floods, and seismic events.
- 20 • DWR has primary responsibility for maintaining federal flood control project facilities throughout
21 the Central Valley, including "project levees" located in the Delta. Project levees formerly certified
22 for Federal Emergency Management Agency (FEMA) 100-year level of protection are under review
23 and some have been decertified. More than 700 miles, or 65 percent, of Delta levees are classified
24 as "nonproject" because they are not part of an authorized federal flood control project. These
25 levees have been built and maintained by landowners or reclamation districts, initially to protect
26 agricultural lands. More recently, their impact on ecosystem and water supply reliability has been
27 recognized. They are almost never as durable as the project levees.
- 28 • Although the risk of levee failure within the Delta has been decreasing during recent decades due to
29 the establishment of the Subventions Program in 1973 and the Delta Levees Program in 1988, and
30 some communities have never seen a levee failure, many Delta islands have flooded at least once.
31 There were 31 levee failures in the legal Delta between 1967 and 2004, somewhat less than an
32 average of one per year. There are more levee breaks and floods in Suisun Marsh, where levees are
33 commonly built to lower levels of protection.⁶
- 34 • Most of the Delta levees do not meet the FEMA definition for 100-year flood protection (per the
35 National Flood Insurance Program). Many do not yet meet the minimum requirements to be eligible
36 for federal disaster assistance.
- 37 • Historically, the levee work by reclamation districts was financed by the owners of the lands within
38 the levees. Over about the last 30 years, the State of California has provided supplemental financing

⁶ Information from US Army Corps of Engineers compiled by Nicole Suard, comment to Delta Stewardship Council, June 2010.

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for levee maintenance and emergency response through DWR's Delta Levee Maintenance Subventions Program. Additional assistance has become available more recently through DWR's Special Flood Control Projects Program.

- Wildfires cause another set of risks to property and ecosystems throughout the Delta in areas with seasonally dry vegetation, and areas with peat soils are particularly vulnerable. Fire districts in some areas, such as the Clarksburg Fire Protection District, provide emergency response with paid and volunteer staff. Other areas, such as East Contra Costa Fire Protection District, have more full time fire department staff. Many areas are not protected by fire departments, such as Bradford Island, which recently experienced a wildfire that destroyed several structures.

The Complexities of Governing the Delta

Passage of the Delta Reform Act was partially a response to widespread criticism of past efforts to address problems centered on the Delta. The California Legislature concluded that resolving the crisis in the Delta would require a fundamental reorganization of the state's management of Delta watershed resources, and recommended a governance structure be established that would direct efforts across state agencies to develop a legally enforceable plan for the Delta (Wat. Code § 85001). Among the major assessments leading to this legislative finding were: a major report by the Little Hoover Commission, *Still Imperiled, Still Important* (2005); the work of the Delta Vision Blue Ribbon Task Force, *Delta Vision Strategic Plan* (2008) and the *Delta Vision Committee Implementation Report* (2008); a review, *Implementation Status of the CALFED Bay-Delta Program, Years 1 through 5*⁷ by the California Department of Finance; and analyses and recommendations from the California Legislative Analyst, including *Reforming the CALFED Bay-Delta Program* (2006).⁸ Additionally, an audit was completed by the California Department of Finance, as reported in *A FISCAL REVIEW: CALFED Bay-Delta Program Summary of Expenditures* as of September 30, 2004.⁹

Addressing the crisis in the Delta will require not only addressing important physical and biological processes and socioeconomic drivers, but coordination and integration among the multiple regulatory processes and actions, administered by more than 240 separate agencies with separate and occasionally overlapping authorities, already in place. A short summary from the *Delta Vision Strategic Plan* (2008, page 121) notes: "When viewing the current governance structures in the Delta three key points emerge: state interests are neither clearly expressed nor effectively pursued, literally hundreds of federal, state and local governmental entities share responsibility for the Delta and its resources, and no one entity is responsible for managing important state interests."

SBX7 1 provides important new tools to address the widely accepted inadequacies of prior governance of the Delta, including integrating existing plans or policies relevant to the Council's work. The reforms launched in the Act are substantial and offer promise of more effective action. They are being initiated at time when many agree action is needed, but important stakeholders disagree on the meaning of the

⁷ California Department of Finance, Performance Review Unit.. *Implementation Status of the CALFED Bay-Delta Program, Years 1 through 5*. November 2005. http://www.dof.ca.gov/osae/special_reviews/documents/Cal_Fed_report_FINAL_w.pdf.

⁸ Legislative Analyst Office. February 2006. *Analysis of the 2006-07 Budget Bill: Reforming the CALFED Bay-Delta Program*. http://www.lao.ca.gov/analysis_2006/resources/res_02_anl06.html.

⁹ The Department of Finance, Office of State Audits and Evaluations. October 2005. *A Fiscal Review: CALFED Bay-Delta Program Summary of Expenditures as of September 30, 2004*. February 6, 2006. http://www.dof.ca.gov/osae/audit_reports/documents/CBDA_Fiscal-Review_Final.pdf.

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1 enacted legislation and funding recommendations. Concurrently, the state's fiscal future looks bleak for
2 many years, which means that financing aspects of the legislation will be uncertain. Lack of a stable
3 financing structure may lead to difficulty in achieving the coequal goals.

4 **Recent and Ongoing Actions Reflect Urgency and Momentum 5 for Change**

6 These challenges, and many others, are anticipated to increase over time, adding to the urgency to find
7 and implement solutions to make the system more sustainable. Examples of past, current, and proposed
8 actions include:

- 9 • Following construction of the SWP and CVP, the State Water Resources Control Board (SWRCB)
10 considered and adopted numerous decisions and associated water rights orders for operations of
11 the projects to identify minimum water flow and water quality conditions at specified locations in
12 the Delta to be maintained in part through the operation of the SWP and CVP in accordance with
13 the Coordinated Operations Agreement that was adopted by the state Legislature and Congress.
14 Most recently, the SWRCB adopted Decision 1641 to implement the 1995 Bay-Delta Plan.
- 15 • In 1988, the SWRCB draft Water Quality Control Plan included specific water use efficiency
16 requirements as part of a plan to improve water supply reliability and Delta ecosystem health.
17 Although this plan was not adopted, these efforts led to the formation of the California Urban Water
18 Conservation Council in 1992 and development of a Memorandum of Understanding between water
19 suppliers throughout the state. There are more than 200 voluntary water supplier signatories to this
20 Memorandum of Understanding to implement water conservation plans. Agricultural users formed
21 the Agricultural Water Management Council and developed a Memorandum of Understanding
22 Regarding Efficient Water Management Practices by Agricultural Water Suppliers in California. In
23 2006, there were more than 60 signatories to this Memorandum of Understanding.
- 24 • Since 1993, the National Marine Fisheries Service and U.S. Fish and Wildlife Service (USFWS) have
25 issued several biological opinions that address modifications of the SWP and CVP operations to
26 avoid jeopardizing the continued existence of salmonid, steelhead, sturgeon, associated populations
27 of killer whales, and delta smelt species that are listed in accordance with the federal Endangered
28 Species Act. Many of the suggested reasonable and prudent action provisions are related to
29 methods to modify Delta flows and water quality to provide increased levels of protection for the
30 listed species.
- 31 • The 2000 CALFED Record of Decision (ROD) recognized the importance of ecosystem restoration for
32 the Delta. Subsequently, CALFED, DWR, DFG, Reclamation, USFWS, and other agencies implemented
33 several programs to initiate ecosystem restoration studies and projects including the Ecosystem
34 Restoration Program, Interagency Ecological Program, studies for Suisun Marsh Preservation
35 Agreement, Delta Pumping Plant Fish Protection Agreement, and San Joaquin River Restoration
36 Program.
- 37 • The CALFED ROD also identified five potential storage projects to be considered as part of a
38 comprehensive plan to restore ecological health and improve water management for beneficial uses
39 in the Bay-Delta system, including expansion of Shasta Lake, Sites Reservoir, In-Delta Storage, Upper
40 San Joaquin River Storage, and expansion of Los Vaqueros Reservoir. DWR and Reclamation initiated
41 the Integrated Storage Investigations to evaluate the feasibility of these programs. Many of these

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1 programs had been identified for potential expansion of storage upstream of the Delta for more
2 than 80 years, primarily to provide flood management ability and water supplies.

- 3 • The DWR California Water Plan Update 2005 provided a framework for action to manage water
4 resources in a sustainable manner with a range of tools, including diversification of regional water
5 portfolios, integrated regional water management, remediation, and use of local surface water and
6 groundwater supplies that support statewide sustainable water supplies.
- 7 • The SWRCB's Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta
8 Estuary establishes objectives for the protection of the estuary's beneficial uses from the effects of
9 salinity (from saltwater intrusion and agricultural drainage) and water project operations (flows and
10 diversions). The SWRCB is currently updating this plan in accordance with the Strategic Workplan
11 published in July 2008. The Workplan addresses several activities that could directly or indirectly
12 affect Delta water quality. The SWRCB actions for many of these activities are to be completed by
13 2012, with several issues to be addressed by mid-2013. These issues also are being addressed by the
14 Bay Delta Conservation Plan (BDCP) as part of the development of the Habitat Conservation Plan
15 and Natural Community Conservation Plan.
- 16 • SB 5 (Machado), enacted in 2007, required DWR and the Central Valley Flood Protection Board to
17 prepare and adopt a Central Valley Flood Protection Plan by 2012, and establishes flood protection
18 requirements for local land use decisions consistent with that plan.
- 19 • Two programs—the Delta Levees Subventions and Delta Levees Special Flood Control Projects—
20 recently have received substantial increases in appropriations (increase by factors of 2 and 10,
21 respectively) due to funds that have become available from Propositions 84 and 1E. Collectively, the
22 programs have revised their guidelines and Proposal Solicitation Packages to reflect this extra
23 funding and to apply and make more specific the priorities established by the appropriating
24 legislation. Generally stated, these priorities place strong emphasis on levee maintenance and initial
25 improvements that are most closely aligned with the State's interests.
- 26 • In July 2007, a speech by Governor Schwarzenegger directed immediate actions to preserve the
27 Delta and California's water supply. His list of immediate actions included: expanding the invasive
28 species control program; screening small Delta diversions; improving North Delta habitat that is
29 important to smelt, specifically the Cache Slough Project; proceeding with a Delta Emergency
30 Response and Preparedness Plan; and managing subsidence in the Delta.
- 31 • In February 2008, Governor Schwarzenegger sent a letter to Senators Perata, Machado, and
32 Steinberg outlining an approach to improve water supply reliability and Delta ecosystem health. The
33 letter described several key elements, including a plan to achieve a 20 percent reduction in per
34 capita water use statewide by 2020, subsequently referred to as "20X2020." DWR established a
35 20X2020 Team that includes SWRCB, California Energy Commission, Department of Public Health,
36 and California Public Utilities Commission. Reclamation and the California Urban Water
37 Conservation Council also participate with the 20X2020 Team.
- 38 • Governor Schwarzenegger's 2008 letter directed DWR and other state agencies to evaluate Delta
39 water conveyance alternatives. These alternatives include (1) continuation of conveying water
40 through existing Delta channels; (2) conveyance using a new isolated facility that would divert
41 water in the North Delta and convey water to the southern Delta or the SWP and CVP pumping
42 plants; (3) a combined "dual conveyance" option that would continue to convey water through
43 existing Delta channels and utilize a new isolated conveyance facility; and (4) continuation of

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conveying water through existing Delta channels following armoring of critical levees to protect the water supply corridor. The letter also required DWR to complete the Integrated Storage Investigations for Temperance Flats (Upper San Joaquin River Storage), Sites Reservoir, and expanded Los Vaqueros reservoir. Additionally, the BDCP Habitat Conservation Plan and Natural Communities Conservation Plan efforts are currently evaluating numerous conveyance options along with measures to improve the ecosystem and reduce the effects of other stressors.

- The 2008 Sacramento-San Joaquin Delta Emergency Preparedness Act (SB 27, Simitian) established the Sacramento-San Joaquin Delta Multi-Hazard Coordination Task Force. It is coordinated by the California Emergency Management Agency and includes local county emergency management agencies, DWR, and DPC. It is charged, among other responsibilities, with the coordination of an emergency response strategy for the Delta region.
- The federal agencies agreed in a December 2009 Interim Federal Action Plan for the California Bay-Delta to coordinate the federal efforts to address ecosystem restoration with the state agencies.
- The BDCP Habitat Conservation Plan and Natural Community Conservation Plan process is conducting a detailed evaluation of methods for ecosystem restoration including development of methods to conduct effects analyses.
- In 2000, CALFED Bay Delta Program EIR/EIS Ecosystem Restoration Program Plan defined "stressors" as natural or unnatural events or activities that adversely affect ecosystem processes, habitats, and species. Environmental stressors identified in the report included water diversions, water contaminants, levee confinement, stream channelization, bank armoring, mining and dredging, excessive harvest of fish and wildlife, introduced predator and competitor species, and invasive plants in aquatic and riparian zones. Concepts to reduce stressors were described in several programs during the past 10 years, including for the Delta Vision Blue Ribbon Task Force and BDCP. The 2010 Ecosystem Restoration Program Conservation Strategy for Stage 2 Implementation, Sacramento-San Joaquin Delta Ecological Management Zone, identifies three categories of stressors: water diversions and barriers, invasives, and water quality stressors. These and other studies have considered a wide range of plans to reduced stressors, including the following actions:
 - Continued implementation of the Sacramento Valley-Delta Fish Screen Program
 - Modification of fish management facilities and operations of the Delta export facilities
 - Continued implementation of the Non-native Invasive Species Strategic Plan and DFG California Aquatic Invasive Species Management Plan
 - Investigation of methods to reduce non-native predatory fish, including increased harvest rates
 - Continued implementation of Department of Boating and Waterways Egeria densa programs, and investigation of the invasion processes for Egeria and Mycosystis and other species
 - Continued implementation of programs for treatment of zebra and quagga mussels and other invasive clam and mussel populations
 - Evaluation of the relationship between non-native invasive species populations and water quality conditions

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- 1 – Evaluation of water quality criteria and best management practices to control methylmercury
2 from restored wetlands, reduce methylmercury from entering Yolo Bypass and the Delta from
3 Cache Creek Settling Basin, and reduce selenium from the San Joaquin River watershed
- 4 – Evaluation of water quality criteria and best management practices to improve dissolved oxygen
5 in the Stockton Deep Water Ship Channel and San Joaquin River
- 6 – Investigation of the relationship of contaminant exposure and organism effects, including
7 consideration of ammonia, pharmaceutical residuals, pyrethroids and other pesticides,
8 herbicides, and toxics from non-point source runoff
- 9 – Investigation of methods to reduce illegal poaching of fish in the Delta
- 10 – Investigation of methods to identify hatchery fish to allow fishermen to release wild fish,
11 including use of "mark select" methods
- 12 • The theme of California Water Plan Update 2009 is integrated water management and
13 sustainability. The implementation plan (Volume 1, Chapter 7) includes actions from multiple state
14 government companion plans and the 2009 comprehensive Delta/water/ecosystem legislative
15 package.

16 These examples demonstrate the enormous efforts and resources that have already worked toward
17 addressing the challenges in the Delta. Despite this, the California Legislature's 2009 water package
18 made clear findings about the ongoing crisis in the Delta and proposed coordinating these efforts
19 through a new governance system with specific responsibilities.

20 **Statutory Findings Concerning the Delta**

21 The key legislative findings and declarations of the Delta Reform Act constitute a clear judgment that the
22 water supply of California and the Delta ecosystem are "...in crisis and existing Delta policies are not
23 sustainable." The Legislature's findings and declarations (Water Code section 85001) include:

- 24 (a) The Sacramento-San Joaquin Delta watershed and California's water infrastructure
25 are in crisis and existing Delta policies are not sustainable. Resolving the crisis
26 requires fundamental reorganization of the state's management of Delta watershed
27 resources....
- 28 (b) In response to the Delta crisis, the Legislature and the Governor required
29 development of a new long-term strategic vision for managing the Delta. The
30 Governor appointed a Blue Ribbon Task Force to recommend a new "Delta Vision
31 Strategic Plan" to his cabinet committee, which, in turn, made recommendations for
32 a Delta Vision to the Governor and the Legislature on January 3, 2009.
- 33 (c) By enacting this division, it is the intent of the Legislature to provide for the
34 sustainable management of the Sacramento-San Joaquin Delta ecosystem, to
35 provide for a more reliable water supply for the state, to protect and enhance the
36 quality of water supply from the Delta, and to establish a governance structure that
37 will direct efforts across state agencies to develop a legally enforceable Delta Plan.

1 Statutory Adoption of Coequal Goals

2 Additionally, the Legislature advanced several broad goals, including the *coequal goals*, a concept
3 central to understanding the Delta Reform Act and the state's policy for the Delta (§ 29702):

- 4 (a) Achieve the two coequal goals of providing a more reliable water supply for
5 California and protecting, restoring, and enhancing the Delta ecosystem. The
6 coequal goals shall be achieved in a manner that protects and enhances the unique
7 cultural, recreational, natural resource, and agricultural values of the Delta as an
8 evolving place.¹⁰
- 9 (b) Protect, maintain, and, where possible, enhance and restore the overall quality of
10 the Delta environment, including, but not limited to, agriculture, wildlife habitat,
11 and recreational activities.
- 12 (c) Ensure orderly, balanced conservation and development of Delta land resources.
- 13 (d) Improve flood protection by structural and nonstructural means to ensure an
14 increased level of public health and safety.

15 Statutory Adoption of Objectives Inherent in 16 Coequal Goals

17 These coequal goals are further expressed in the eight policy objectives set forth in the Delta Reform
18 Act, which “the Legislature declares are inherent in the coequal goals for management of the Delta”
19 (Wat. Code § 85020):

- 20 (a) Manage the Delta’s water and environmental resources and the water resources of
21 the state over the long term.
- 22 (b) Protect and enhance the unique cultural, recreational, and agricultural values of the
23 California Delta as an evolving place.
- 24 (c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a
25 healthy estuary and wetland ecosystem.
- 26 (d) Promote statewide water conservation, water use efficiency, and sustainable water
27 use.
- 28 (e) Improve water quality to protect human health and the environment consistent
29 with achieving water quality objectives in the Delta.
- 30 (f) Improve the water conveyance system and expand statewide water storage.
- 31 (g) Reduce risks to people, property, and state interests in the Delta by effective
32 emergency preparedness, appropriate land uses, and investments in flood
33 protection.

¹⁰ Identical language is found in Water Code section 85054, and other references are also found in law.

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1 (h) Establish a new governance structure with the authority, responsibility,
2 accountability, scientific support, and adequate and secure funding to achieve these
3 objectives.

4 The Act establishes new policies – including reduced reliance on the Delta in meeting California’s future
5 water supply needs in the future through a statewide strategy of investing in improved regional
6 supplies, conservation, and water use efficiency (Wat. Code § 85021). The Act explicitly does not change
7 a number of existing laws – such as area of origin, watershed of origin, county of origin, or any other
8 water rights protections (Wat. Code § 85301(a)), or the California Endangered Species Act (Wat. Code §
9 85032(b)), among others. It also affirms “The longstanding constitutional principle of reasonable use and
10 the public trust doctrine shall be the foundation of state water management policy and are particularly
11 important and applicable to the Delta.” (Wat. Code § 85023).

12 **The Delta Stewardship Council and its Mission**

13 The Delta Reform Act creates the Council as an independent agency of the state (Wat. Code § 85200).
14 SBX7 1 also revises the Public Resources Code (§ 29702 through 29780, and adds Division 22.3,
15 specifying changes to the DPC and creating the Delta Conservancy. The Delta Reform Act gives the
16 Council several responsibilities, many linked to a comprehensive “Delta Plan,” which the Council is
17 charged to develop, adopt, and commence implementation of by January 1, 2012. The Council is also
18 charged with developing an Interim Plan “...that includes recommendations for early actions, projects,
19 and programs” (Wat. Code § 85084). Although no legislative deadline was given, the Council has set
20 August 27, 2010, as the date for adoption of the Interim Plan, recognizing the pressing obligation of
21 meeting the legislative Delta Plan deadline. Both the DPC and Delta Conservancy are given roles with
22 respect to the management of the Delta and providing input to the Delta Plan.

23 **Consideration of Early Actions in the Interim Plan**

24 The Act discusses “early actions” in Water Code sections 85080 through 85089, assigning several to
25 other agencies. The Council completed the only required early action solely within its powers by
26 appointing a Delta Independent Science Board on June 24, 2010 (Wat. Code § 85080).

27 The Council also has basis to make recommendations on early actions called for in Water Code section
28 85084. The Council has initiated processes to advance other early actions, including:

- 29 • To assist in meeting its responsibilities as a responsible agency and its appellate role for the BDCP,
30 the Council has defined its role in relationship to the BDCP steering committee and has selected a
31 consultant to provide advice specific to BDCP.
- 32 • The Council has initiated relationships with other federal, state, and local agencies, making progress
33 on the requirements of Water Code section 85082 (engaging federal agencies) and section 85204
34 (establishing an agency coordination group), among others.

35 Some early actions identified in the Act and assigned to other agencies include dates for completion
36 (July 2010 through December 2010), but most are ongoing actions or projects with no specified
37 completion date. In all cases, it will take time and effort to understand these and other proposed
38 projects within the new context of the Act. Recognizing that it will be required to make
39 recommendations on a wide range of activities before adoption of the Delta Plan by January 2012, the
40 Council concluded that the Interim Plan must provide a framework to guide its actions during this

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1 period. It is the intent of the Council that this Interim Plan will provide an effective framework within
2 which the Council can consistently assess and prioritize important issues until the Delta Plan is adopted.
3 The Council intends to use the eight policy objectives (Wat. Code § 85020) as a foundation for the
4 framework. Although the framework may transition smoothly for use in the Delta Plan, the Interim Plan
5 will not provide the Council a basis for decision making of equivalent impact as will a Delta Plan adopted
6 after completing environmental review processes.

7 Successful implementation of new legislation as substantial as SBX7 1 requires not only launching new
8 entities and activities but also adjusting the roles and activities of existing agencies operating under
9 different authorities, with separate legislative mandates, funding streams, and constituencies. All
10 affected state and local agencies have responsibility now to undertake activities in conformity with the
11 Act.

12 In addition to providing a framework for the Council's actions, this Interim Plan is intended to inform the
13 actions of agencies as they incorporate provisions of SBX7 1 into their activities until the Delta Plan is
14 adopted. Council work on "early actions" will appropriately continue under the framework of the
15 Interim Plan and on the schedule established in the Council's work plan. The Council intends to give
16 highest priority to issues that require consideration regardless other actions involving major ecosystem
17 restoration or conveyance improvements, or decisions made on new bonds.

18 Work on the Delta Plan has begun while the Interim Plan is being finalized. The Council has decided to
19 structure both documents around the common set of policy objectives contained in Water Code section
20 85020, and the Delta Plan is expected to build on the Interim Plan.

1 **Section 2. Uses of the Interim Plan**

2 The Interim Plan is intended to have three uses. First, it would serve as the primary framework for the
3 Council until the Delta Plan is adopted and implementation begins. Second, it would inform and assist
4 the Council with its responsibilities in relation to other agencies, as required in SBX7 1 or elsewhere.
5 Third, it would provide linkage to the Delta Plan by establishing legal authority, work processes and
6 procedures, and ways to build effective relationships.

7 **Framework for Early Actions**

8 The Interim Plan outlines processes the Council would use to develop its recommendations for early
9 actions, projects, and programs. Many early actions identified in SBX7 1 are assigned to other agencies,
10 but the Interim Plan can, in most cases, inform the work of other agencies as the Delta Plan is
11 developed. The Interim Plan also informs actions of the Council and how the Council would deal with the
12 issues required in the Delta Plan. Early actions identified in the Act include:

- 13 • Recommendations for new Delta flow criteria assigned to the DFG for recommendations in section
14 85084.5, including "...quantifiable biological objectives for aquatic and terrestrial species of concern
15 dependent on the Delta," and a report by the SWRCB in section 85086(c)(1)
- 16 • Responsibilities of the DWR under section 85085, including:
 - 17 – Efforts to cooperate in the construction and implementation of the Two-Gates Fish Protection
18 Demonstration Project by December 1, 2010
 - 19 – Evaluating the effectiveness of the Threemile Slough Barrier project
 - 20 – Proceeding with other near-term actions as identified in the *Delta Vision Strategic Plan*,
21 including ecosystem restoration opportunities such as improved floodplain in the Yolo Bypass
22 and improved emergency preparedness and response
 - 23 – Assisting in implementing early action ecosystem restoration projects, including tidal marsh
24 restoration in Dutch Slough and on Meins Landing
- 25 • Preparation of a proposal to coordinate flood and water supply operations of the SWP and the
26 federal CVP (Wat. Code § 85309), for which DWR has lead responsibility
- 27 • Review of the report of the DPC regarding potential changes in the Primary and Secondary Zones of
28 the Delta, in light of the coequal goals and the mandates of the Act
- 29 • Completion of the economic sustainability plan by the DPC no later than July 1, 2011 (Pub.
30 Resources Code § 29759) to be reviewed by the Council for consistency with the Delta Plan (§
31 29761.5(b))
- 32 • Development of the DPC's proposal "...to protect, enhance, and sustain the unique cultural,
33 historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a
34 manner consistent with the coequal goals" (Wat. Code § 85301)

1 **Inform Council Responsibilities and 2 Recommendations**

3 The Interim Plan outlines how the Council will provide advice to—or review of the recommendations
4 of—other agencies, including:

- 5 • Advice to local and regional planning agencies (Wat. Code § 85212)
- 6 • Review and approval of Proposition 1E expenditures for selected projects (§ 83002 (a)(1)) not
7 already funded or completed under this program

8 Additionally, the Interim Plan includes important organizational and procedural matters that would
9 assist the Council in its role as a responsible agency in development of the EIR for BDCP (§ 85320(c)) and
10 potentially as an appellate body regarding the DFG determination of whether BDCP has met specified
11 criteria (§ 85320(e)).

12 The Council will be asked to comment on projects and plans affecting the Delta that are undergoing
13 environmental review, and those reviews should be based on the full range of policy objectives and
14 responsibilities included in the Act. The Council has directed staff to develop procedures for this
15 purpose; these draft procedures are included in Appendix A of this Interim Plan.

16 **Provide Linkage to the Delta Plan**

17 The Interim Plan provides a framework for Council operations during the development of the Delta Plan,
18 and many aspects of this framework should continue after the Delta Plan is adopted. The legal authority
19 provided in the Act should be used consistently both before and after the Delta Plan is adopted. Second,
20 the Council work processes described and defined by the Interim Plan should continue with minimal
21 modification in the Delta Plan. Third, the relationships developed with other agencies under the Interim
22 Plan should remain effective as the Delta Plan is implemented.

1 **Section 3. Interim Plan Processes**

2 Neither statutes nor plans are self-executing; they require focused and sustained actions by responsible
3 public agencies for success. This section of the Interim Plan outlines procedures and processes the
4 Council would use, many of which can carry forward to implementation of the Delta Plan and can also
5 serve to structure the Council's work in developing the Delta Plan.

6 To effectively meet its responsibilities and manage its work flow, the Council would develop:¹¹

- 7 • Provisions for amendment at the Council's discretion
- 8 • A plan to engage agencies whose activities are related and affected by the requirements of SBX7 1
9 with the goal of effective communication of the activities of the Council under the Act
- 10 • Formalized procedures for core responsibilities of the Council, included in Appendix A
- 11 • A formal annual or biannual work plan for Council implementation
- 12 • Structured decision processes, which may vary by categories of decisions

13 **Provision for Amendment**

14 This Interim Plan can be amended by majority vote of the Council membership at any regularly
15 scheduled meeting of the Council.

16 **Engage and Establish Working Relationships with 17 Agencies**

18 The Delta Reform Act includes provisions requiring the Council to engage state, local, and federal
19 agencies and establishes processes to that end. Outreach to agencies whose activities are affected by
20 SBX7 1 will begin under the Interim Plan and will continue during implementation of the Delta Plan.

21 The statutory requirements for working with other agencies include:

22 85082. The council shall develop and implement a strategy to appropriately engage
23 participation of the federal agencies with responsibilities in the Delta. This strategy shall
24 include engaging these federal agencies to develop the Delta Plan consistent with the
25 federal Coastal Zone Management Act of 1972 (16 U.S.C. Sec. 1451 et seq.), the federal
26 Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and Section 8 of the federal Reclamation
27 Act of 1902.

28 85204. The council shall establish and oversee a committee of agencies responsible for
29 implementing the Delta Plan. Each agency shall coordinate its actions pursuant to the
30 Delta Plan with the council and the other relevant agencies.

¹¹ Additional implementation features will be developed in the Delta Plan, including for adaptive management responsive to Water Code Section 85308(f).

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1 85212. The council shall review and provide timely advice to local and regional planning
2 agencies regarding the consistency of local and regional planning documents, including
3 sustainable communities strategies and alternative planning strategies prepared
4 pursuant to Section 65080 of the Government Code, with the Delta Plan. The council's
5 input shall include, but not be limited to, reviewing the consistency of local and regional
6 planning documents with the ecosystem restoration needs of the Delta and reviewing
7 whether the lands set aside for natural resource protection are sufficient to meet the
8 Delta's ecosystem needs. A metropolitan planning organization preparing a regional
9 transportation plan under Section 65080 of the Government Code that includes land
10 within the primary or secondary zones of the Delta shall consult with the council early in
11 the planning process regarding the issues and policy choices relating to the council's
12 advice. No later than 60 days prior to the adoption of a final regional transportation
13 plan, the metropolitan planning organization shall provide the council with a draft
14 sustainable communities strategy and an alternative planning strategy, if any.
15 Concurrently, the metropolitan planning organization shall provide notice of its
16 submission to the council in the same manner in which agencies file a certificate of
17 consistency pursuant to Section 85225. If the council concludes that the draft
18 sustainable communities strategy or alternative planning strategy is inconsistent with
19 the Delta Plan, the council shall provide written notice of the claimed inconsistency to
20 the metropolitan planning organization no later than 30 days prior to the adoption of
21 the final regional transportation plan. If the council provides timely notice of a claimed
22 inconsistency, the metropolitan planning organization's adoption of the final regional
23 transportation plan shall include a detailed response to the council's notice.

24 85225. A state or local public agency that proposes to undertake a covered action, prior
25 to initiating the implementation of that covered action, shall prepare a written
26 certification of consistency with detailed findings as to whether the covered action is
27 consistent with the Delta Plan and shall submit that certification to the council.

28 85225.5. To assist state and local public agencies in preparing the required certification,
29 the council shall develop procedures for early consultation with the council on the
30 proposed covered action.

31 85300. (a) ...The Delta Plan may also identify specific actions that state or local agencies
32 may take to implement the subgoals and strategies.

33 (b) In developing the Delta Plan, the council shall consult with federal, state, and local
34 agencies with responsibilities in the Delta. All state agencies with responsibilities in
35 the Delta shall cooperate with the council in developing the Delta Plan, upon
36 request of the council.

37 85301. (a) The [Delta Protection] commission shall develop, for consideration and
38 incorporation into the Delta Plan by the council, a proposal to protect, enhance, and
39 sustain the unique cultural, historical, recreational, agricultural, and economic values of
40 the Delta as an evolving place, in a manner consistent with the coequal goals. For the
41 purpose of carrying out this subdivision, the commission may include in the proposal the
42 relevant strategies described in the Strategic Plan.

43 (b) (1) The commission shall include in the proposal a plan to establish state and
44 federal designation of the Delta as a place of special significance, which may

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1 include application for a federal designation of the Delta as a National Heritage
2 Area.

- 3 (2) The commission shall include in the proposal a regional economic plan to
4 support increased investment in agriculture, recreation, tourism, and other
5 resilient land uses in the Delta. The regional economic plan shall include
6 detailed recommendations for the administration of the Delta Investment Fund
7 created by section 29778.5 of the Public Resources Code.
- 8 (c) For the purposes of assisting the commission in its preparation of the proposal, both
9 of the following actions shall be undertaken:

- 10 (1) The Department of Parks and Recreation shall prepare a proposal, for
11 submission to the commission, to expand within the Delta the network of state
12 recreation areas, combining existing and newly designated areas.

13 The proposal may incorporate appropriate aspects of any existing plans,
14 including the Central Valley Vision Implementation Plan adopted by the
15 Department of Parks and Recreation.

- 16 (2) The Department of Food and Agriculture shall prepare a proposal, for
17 submission to the commission, to establish market incentives and infrastructure
18 to protect and enhance the economic and public values of Delta agriculture.

- 19 (d) The commission shall submit the proposal developed pursuant to subdivision (a) to
20 the council. The council shall consider the proposal and may include any portion of
21 the proposal in the Delta Plan if the council, in its discretion, determines that the
22 portion of the proposal is feasible and consistent with the objectives of the Delta
23 Plan and the purposes of this division.

24 85305. (a) The Delta Plan shall attempt to reduce risks to people, property, and state
25 interests in the Delta by promoting effective emergency preparedness, appropriate land
26 uses, and strategic levee investments.

27 (b) The council may incorporate into the Delta Plan the emergency preparedness and
28 response strategies for the Delta developed by the California Emergency
29 Management Agency pursuant to section 12994.5.

30 85306. The council, in consultation with the Central Valley Flood Protection Board, shall
31 recommend in the Delta Plan priorities for state investments in levee operation,
32 maintenance, and improvements in the Delta, including both levees that are a part of
33 the State Plan of Flood Control and nonproject levees.

34 85307. (a) The Delta Plan may identify actions to be taken outside of the Delta, if those
35 actions are determined to significantly reduce flood risks in the Delta.

36 (b) The Delta Plan may include local plans of flood protection.

37 (c) The council, in consultation with the Department of Transportation may address in
38 the Delta Plan the effects of climate change and sea level rise on the three state
39 highways that cross the Delta.

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1 (d) The council, in consultation with the State Energy Resources Conservation and
2 Development Commission and the Public Utilities Commission, may incorporate into
3 the Delta Plan additional actions to address the needs of Delta energy development,
4 energy storage, and energy distribution.

5 85309. The department, in consultation with the United States Army Corps of Engineers
6 and the Central Valley Flood Protection Board, shall prepare a proposal to coordinate
7 flood and water supply operations of the State Water Project and the federal Central
8 Valley Project, and submit the proposal to the council for consideration for
9 incorporation into the Delta Plan. In drafting the proposal, the department shall
10 consider all related actions set forth in the Strategic Plan.

11 85320. (a) The Bay Delta Conservation Plan (BDCP) shall be considered for inclusion in
12 the Delta Plan in accordance with this chapter....

13 (c) The department shall consult with the council and the Delta Independent Science
14 Board during the development of the BDCP. The council shall be a responsible
15 agency in the development of the environmental impact report. The Delta
16 Independent Science Board shall review the draft environmental impact report and
17 submit its comments to the council and the Department of Fish and Game.

18 (d) If the Department of Fish and Game approves the BDCP as a natural community
19 conservation plan pursuant to Chapter 10 (commencing with § 2800) of Division 3 of
20 the Fish and Game Code, the council shall have at least one public hearing
21 concerning the incorporation of the BDCP into the Delta Plan.

22 (e) If the Department of Fish and Game approves the BDCP as a natural community
23 conservation plan pursuant to Chapter 10 (commencing with § 2800) of Division 3 of
24 the Fish and Game Code and determines that the BDCP meets the requirements of
25 this section, and the BDCP has been approved as a habitat conservation plan
26 pursuant to the federal Endangered Species Act (16 U.S.C. § 1531 et seq.), the
27 council shall incorporate the BDCP into the Delta Plan. The Department of Fish and
28 Game's determination that the BDCP has met the requirements of this section may
29 be appealed to the council.

30 (f) The department, in coordination with the Department of Fish and Game, or any
31 successor agencies charged with BDCP implementation, shall report to the council
32 on the implementation of the BDCP at least once a year, including the status of
33 monitoring programs and adaptive management.

34 (g) The council may make recommendations to BDCP implementing agencies regarding
35 the implementation of the BDCP. BDCP implementing agencies shall consult with
36 the council on these recommendations. These recommendations shall not change
37 the terms and conditions of the permits issued by state and federal regulatory
38 agencies.

39 85350. The council may incorporate other completed plans related to the Delta into the
40 Delta Plan to the extent that the other plans promote the coequal goals.

1 Actions to Engage Agencies

- 2 The Council will meet the specific requirements for engaging other agencies and will also seek their
3 contribution to developing and implementing first the Interim Plan and then the Delta Plan. The
4 following actions anticipated go beyond the specific requirements of the Delta Reform Act.

Table 3-1
Actions in Addition to Requirements of the Delta Reform Act

Action	Comment
Initiate contact with agencies, including personal contact and written communications	In progress.
Establish agency coordination group required under Water Code section 85204	Initiate in third quarter 2010; structure to contribute to development of Delta Plan and related environmental documents during 2010 and 2011, to address issues arising in implementation of the Delta Plan thereafter, and in adaptive management processes no later than 2017.
Engage federal agencies	Federal agencies are authorized to participate in California Bay-Delta programs under Public Law 108-361 (2004). Relationships established under CALFED before passage of SBX7 1 are being reviewed and adjusted as appropriate. The Interim Federal Action Plan for the California Bay-Delta (December 22, 2009) provides a basis on which to engage federal agencies.
Establish early consultation processes	Procedures for early consultation appropriate to the Interim Plan as a framework document are included below and in Appendix A. Further development of procedures appropriate for use regarding covered actions (Wat. Code § 85225.5) will occur in the Delta Plan.
Develop Delta Plan consistent with the Coastal Zone Management Act (CZMA) (or equivalent), Clean Water Act, and Reclamation Act (Wat. Code § 85082)	Anticipated in development of the Delta Plan; requires discussion with federal agencies and also state agencies with CZMA designations.

5 Policies and Procedures

- 6 Among the core responsibilities of the Council, early attention will be given to its responsibilities related
7 to reviews of proposed actions and plans. As discussed in Section 2 of this Interim Plan, the Council will
8 be making recommendations on several issues before adoption of the Delta Plan. High priority should be
9 given to establishing systems and processes that establish effective relationships with state and local
10 agencies whose actions and plans are relevant to the roles of the Council. The Council should adopt

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1 procedures regarding receipt and processing of information and requests, including forms for use in
2 submitting materials, expected to be similar to those currently used by state, regional, and local
3 governments. Appendix A includes five types of procedures, some of which are under development:

- 4 • The adopted procedures on Council meetings
5 • A statement of procedures for bringing actions before the Council
6 • Administrative procedures for appeals and reviews

7 **Work Plan**

8 A formal work plan provides the structure by which the Council uses its resources most effectively and
9 manages relationships with others to achieve its goals. A work plan is especially important for a newly
10 created agency requiring selection among possible activities and focus on achieving a defined set of
11 activities. The work plan can be brief or extensive but serves to focus energy, communicate intent to
12 others, and provide accountability.¹²

13 Items are added to the work plan and assigned a target date for action by the Council. In time, the work
14 plan is likely to include regularly scheduled events, such as annual updates in the tools identified in
15 Section 5, or reports on the policy implications of biannual Delta science conferences. Consideration of
16 items and scheduling for consideration should include consultations with other agencies, perhaps
17 including the committee of agencies required under Water Code section 85204.

18 **Decision Processes**

19 As a newly created body, the Council was required to adopt its own rules under the enabling legislation.
20 See Appendix A.

21 In addition, Council decisions should adhere to these principles and procedures:

- 22 • The Council would hear “conceptual” proposals as informational items at its discretion but would
23 not act on conceptual proposals nor would the Council issue “in concept” approvals.
- 24 • The Council would adhere to robust procedures to ensure transparency and adequate opportunities
25 for interested parties and the public to participate in decision making, including availability of
26 information related to a decision well before the meeting at which it is considered.
- 27 • The Council will use of the best available science.
- 28 – The Council should rely heavily on the Delta Science Program and the Delta Independent Science
29 Board in determining the relevance, value, and reliability of the best available science and in
30 organizing that information for use in its decisions. The Council has the final responsibility in
31 determining the best available science used in support of its actions, including when a choice
32 among competing interpretations of available science must be made.

12 The San Francisco Bay Conservation and Development Commission provided monthly updates on its strategic plan as a form of a work plan. http://www.bcdc.ca.gov/reports/strategic_status_rpt.pdf. For a highly detailed work plan that focuses on transportation projects, see that developed annually by the Southern California Association of Governments, which includes several hundred pages of text and an associated budget. <http://www.scag.ca.gov/owp/index.htm>.

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- 1 – Best available science is specific to a decision context and would necessarily be related to the
2 specific decision to be made and the time frame available for that decision. There is no
3 expectation of delaying decisions to await improved science. Action may be taken based on
4 incomplete science if it is the best available.
- 5 – Best available science used by the Council shall be developed and presented in a transparent
6 manner including clear statements of assumptions, conceptual models, methods used, and
7 conclusions. Sources of data used shall be cited and analytic tools used identified.
- 8 – Best available science changes over time and the Council may revisit any prior decision at its
9 discretion upon making a judgment of material change in the best available science relevant to
10 that decision. The following section elaborates on the characteristics of best available science.
- 11 • Consideration of any project or decision against all eight policy objectives in accordance with basic
12 legal authorities as summarized by Appendix D.
- 13 • Consideration of technical and legal feasibility, consistency or conflicts with other programs, and
14 ability to implement in timely manner for a specified schedule.
- 15 • Use of the seven framework tools as a basis for analysis and development of performance
16 measures.
- 17 • Commitment to make progress on all eight policy objectives over roughly similar time frames, with
18 roughly equivalent certainty regarding effectiveness.
- 19 • The Council will issue specific written findings and decisions as required by law or otherwise within
20 its discretion.

21 **Best Available Science**

22 Best available science must be consistent with the scientific process.¹³ The scientific process described
23 below includes steps for achieving best science, guidelines and criteria, effective communication and
24 documentation, and process for reviewing scientific rationale for the proposed Interim Plan Early
25 Actions. Ultimately, best available science requires the best scientists using the best information and
26 data to assist management and policy decisions. The processes and information used should be clearly
27 documented and effectively communicated.

28 ***Steps for Achieving Best Science***

29 Science consistent with the scientific process includes the following elements: clearly stated objectives,
30 a conceptual model, a good experimental design with standardized methods for data collection,
31 statistical rigor and sound logic for analysis and interpretation, and clear documentation of methods,
32 results, and conclusions. The best science is transparent; it clearly outlines assumptions and limitations.
33 The best science is also reputable; it has undergone peer review conducted by active experts in the
34 applicable field(s) of study. Scientific peer review addresses the validity of the methods used, the

13 Sullivan, P. J., J. M. Acheson, P. L. Angermeier, T. Faast, J. Flemming, C. M. Jones, E. E. Knudsen, T. J. Minello, D. H. Secor, R. Wunderlich, and B. A. Zanetell. 2006. *Defining and implementing best available science for fisheries and environmental science, policy, and management*. American Fisheries Society, Bethesda, Maryland, and Estuarine Research Federation, Port Republic, Maryland. Available from http://www.fisheries.org/afs/docs/policy_science.pdf (accessed July 2010).

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- 1 adequacy of the methods and study design in addressing study objectives, the adequacy of the
2 interpretation of results, whether the conclusions are supported by the results, and whether the
3 findings advance scientific knowledge.¹⁴
- 4 There are several sources of scientific information and trade-offs associated with each.¹⁵ The primary
5 sources of scientific information, in order of most to least scientific credibility for informing
6 management decisions, include: Independently peer-reviewed publications including journal
7 publications and books (most desirable) and general reports and publications; science expert opinion;
8 and anecdotal evidence (Table 3-2.) Each of these sources of scientific information may be the best
9 available at a given time, containing varying levels of understanding and uncertainty. These limitations
10 shall be clearly documented when used to inform decisions.

Table 3-2

Prioritized List of Sources of Science from Most to Least Scientific Credibility

Sources with more “scientific credibility” are at top of list. Trade-offs can be seen between the timeliness of the information and the level to which it has been reviewed.¹⁶

Source	Content	Review Level	Timeliness	Availability
Independently peer-reviewed publications	New findings	Minimal to extensive, external	Slow to medium	Broadly available
General scientific reports and publications	Standard reports and analyses of ongoing findings	Internal	Medium	Available from source
Science expert opinion	Opinion and broadly held understanding	Through reputation only	Fast	Available from individuals and groups
Anecdotal evidence	Personal observations and beliefs	Limited	Fast	Available from individuals and groups

11 Guidelines and Criteria

- 12 As recommended by the 2004 National Research Council Committee on Defining the Best Scientific
13 Information Available for Fisheries Management (NRC report), the application of the best available
14 science into natural resource management is best defined as a process that requires guidelines and

¹⁴ Sullivan et al., 2006.

¹⁵ Sullivan et al., 2006; Ryder, D.S., M. Tomlinson, B. Gawne, and G.E. Likens. 2010. *Defining and using ‘best available science’: a policy conundrum for the management of aquatic ecosystems*. Marine and Freshwater Research 61: 821-828.

¹⁶ Adapted from Sullivan et al., 2006.

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1 criteria.¹⁷ Major findings and recommendations in the NRC report support the establishment of
2 procedural guidelines over creating a statutory definition of "best available science" as the best means
3 for creating accountability and enhancing the credibility of scientific information used in natural
4 resource management. The committee recommended implementation guidelines to govern the
5 production and use of scientific information for ensuring "best scientific information available" in
6 fisheries management. The guidelines were based on six broad criteria and are applicable to the use and
7 evaluation of "best available science" in natural resource management at large. These six criteria are (1)
8 relevance, (2) inclusiveness, (3) objectivity, (4) transparency and openness, (5) timeliness, and (6) peer
9 review.

10 The recommended guidelines and criteria in the NRC report are consistent with the criteria developed
11 by the Legislature of the State of Washington for assessing "best available science." The State of
12 Washington requires counties and cities to include the "best available science" in developing policies
13 and regulations pursuant to the Washington State Growth Management Act. The State of Washington
14 criteria include six characteristics for a valid scientific process: (1) peer review, (2) methods, (3) logical
15 conclusions and reasonable inferences, (4) quantitative analyses, (5) context, and (6) references.¹⁸

16 For the purpose of informing Council decisions, "best available science" for Delta-related activities
17 should be consistent with the guidelines and criteria developed by the NRC and the State of
18 Washington. Proposed early actions, projects, and programs should document that the science used
19 follows the guidelines adapted from the NRC report as they apply to the Delta ecosystem:

- 20 • **Relevance.** Scientific information used should be germane to the Delta ecosystem attribute and/or
21 biologic organism (and/or process) affected by the proposed early actions, projects, and programs.
22 Analogous information from a different region, but applicable to the Delta ecosystem and/or biota
23 may be the most relevant when Delta-specific scientific information is non-existent or insufficient.
24 The quality and relevance of the data and information used shall be clearly addressed.
- 25 • **Inclusiveness.** Scientific information used shall incorporate a thorough review of all relevant
26 information and analyses across all relevant disciplines. There are many analysis tools available to
27 the scientific community.¹⁹ Careful consideration of the suite of possible relevant analysis tools shall
28 be explored and justification for the methods selected shall be documented. Consideration of the
29 variability of available information shall be incorporated with clear documentation of the
30 uncertainty, level of review, citations, and availability of the information.
- 31 • **Objectivity.** Data collection and analyses considered shall meet the standards of the scientific
32 method and be void of non-scientific influences and considerations.²⁰

17 National Research Council, Committee on Defining the Best Scientific Information Available for Fisheries Management. 2004. *Improving the use of "Best Scientific Information Available" Standard in Fisheries Management*. National Academy Press, Washington D.C. Available from http://www.nap.edu/catalog.php?record_id=11045#toc (accessed July 2010).

18 Washington Administrative Code (WAC) 365-195-900. Available from <http://apps.leg.wa.gov/wac/default.aspx?cite=365-195-900> (accessed July 2010); Washington Administrative Code (WAC) 365-195-905. Available from <http://apps.leg.wa.gov/wac/default.aspx?cite=365-195-905> (accessed July 2010).

19 McGarvey, DJ. 2007. "Merging Precaution with Sound Science under the Endangered Species Act." Bioscience 57: 65-70.

20 NRC 2004; Sullivan et al., 2006.

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- **Transparency and Openness.** The sources and methods used for analyzing the science used shall be clearly identified. The opportunity for public comment on the use of science in the proposed early actions, projects, and programs is recommended. Limitations of research used shall be clearly identified and explained. If a range of certainty is associated with the data and information used, a mechanism for communicating uncertainty shall be employed.²¹
- **Timeliness.** There are two main elements of timeliness: (1) data collection shall occur in a manner sufficient for adequate analyses before a management decision is needed, and (2) scientific information used shall be applicable to current situations. Timeliness also means that results from scientific studies and monitoring may be brought forward before the study is complete to address management needs.²² In these instances, it is necessary that the uncertainties, limitations, and risks associated with preliminary results are clearly documented.
- **Peer Review.** The quality of the science used would be measured by the extent and quality of the review process. Independent external scientific review of the science is most important because it ensures scientific objectivity and validity.²³ The following criteria represent a desirable peer review process:²⁴
 - Independent External Reviewers. A qualified external reviewer embodies the following qualities: (1) has no conflict of interest with the outcome of the decision being made, (2) can perform the review free of persuasion by others, (3) has demonstrable competence in the subject as evidenced by formal training or experience, (4) is willing to utilize his or her scientific expertise to reach objective conclusions that may be incongruent with his or her personal biases, and (5) is willing to identify all costs and benefits of ecological and social alternative decisions.
 - When to Conduct Peer Review. Independent scientific peer review shall be applied informally or formally to early ideas and initial draft plans, formally to written review once official draft plans or policies are released to the public, and formally to final released plans.
 - Coordination of Peer Review. Independent peer review shall be coordinated by entities and/or individuals that (1) are not a member of the independent scientific review team, (2) have a particular and special expertise in the subject under review, and (3) have had no direct involvement in the particular actions under review.

Effective Communication and Documentation

The application of the guidelines and criteria for best available science should be clearly communicated within a proposed early action, project, or program. Documentation of how scientific information is produced, validated, and applied to management decisions will improve the accountability and

²¹ Lukey, J.R., S.S. Crawford, and D. Gillis. 2009. "Effect of Information Availability on Assessment and Designation of Species at Risk". *Conservation Biology*. In review.

²² NRC, 2004.

²³ Meffe, G.K., P.R. Boersma, D.D. Murphy, B.R. Noon, H.R. Pulliam, M.E. Soule, and D.M. Waller. 1998. "Independent Scientific Review in Natural Resource Management." *Conservation Biology*. 12: 268-270.

²⁴ Adapted from Meffe et al., 1998.

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1 transparency of the proposed early action, project, or program.²⁵ The documentation should include
2 clarity in the use of terms and information, even if those terms are commonly used (e.g. ‘monitoring’
3 and ‘assessment’).²⁶ Documentation of the explicit uncertainty in results, the sources of uncertainty,
4 and an assessment of the relative risks associated with a range of alternatives or management options
5 should be documented in proposed early actions, projects, and programs.²⁷

6 ***Process for Reviewing Scientific Rationale for Proposed Interim Plan Early 7 Actions***

8 The Delta Science Program should engage in reviewing the scientific information and the use of science
9 in proposed early actions, projects, and programs specified in statute or received by the Council from
10 external entities. The goal of the review is to ascertain the quality of the underlying science used and
11 documented in the proposed early action, project, or program and determine the likelihood of success
12 in achieving the associated expected outcome(s) based on the underlying science. The Delta Science
13 Program should perform an internal review of the early action’s use of scientific information pursuant to
14 the elements of best science and the extent to which the science meets the Council’s guidelines and
15 criteria for best available science. The review process would yield the following possible determinations
16 regarding the scientific rationale for the proposed early action, project, or program: (1) adequate for
17 informing decision making regarding an early action, (2) adequate provided that the Delta Science
18 Program’s recommended modifications are made, and (3) not ready to inform decision making on an
19 early action. The Delta Science Program can engage and organize external reviewers and peer review
20 panels to perform additional reviews for modified proposed early actions as necessary.

21 **Basis for Identifying Actions**

22 In adopting this Interim Plan, the Council also conveys its commitment to meeting its obligations under
23 the Delta Reform Act. An important issue concerns actions that may meet the tests of “covered actions”
24 under statute but cannot be formally considered by the Council until a Delta Plan is adopted. Many
25 ongoing processes include activities that may be covered actions. As the Council develops the Delta
26 Plan, it may be expected to consider all ecosystem restoration, water conveyance, and flood
27 management proposals advanced in the state and local public policy processes of the past 5 years (e.g.,
28 the Ecosystem Restoration Program of the DFG, the BDCP, the Suisun Marsh Plan, or FloodSAFE).
29 Moreover, to satisfy Water Code section 85300, the Council will “...consider each of the strategies and
30 actions set forth in the [Delta Vision] Strategic Plan and may include any of those strategies or actions in
31 the Delta Plan.” This is a long list of activities and more are likely to exist or be proposed before the
32 Delta Plan is adopted.

33 Identification of an action as plausibly a “covered action” that may be included in the Delta Plan does
34 not automatically require that it be “stopped” until the Delta Plan is completed. It does mean that the
35 action should be considered within the legal framework of SBX7 1. This Interim Plan proposes that the
36 primary responsibility for determining whether an activity meets the definition of a covered action lies
37 with responsible agencies, recognizing that other parties may appeal any determination that an action is

²⁵ NRC, 2004.

²⁶ Ryder et al. 2010.

²⁷ NRC, 2004.

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1 not covered once a Delta Plan is adopted. Processes for consultation with the Council and its staff
2 regarding how to handle possibly covered actions under the Interim Plan are detailed below.

3 ***Definition of Covered Actions***

4 SBX7 1 (Wat. Code § 85057.5) defines a covered action as a plan, program, or project that meets all of
5 the following conditions:

- 6 1. Will occur, in whole or in part, within the boundaries of the Delta or Suisun Marsh
- 7 2. Will be carried out, approved, or funded by the state or a local public agency
- 8 3. Is covered by one or more provisions of the Delta Plan
- 9 4. Will have a significant impact on achievement of one or both of the coequal goals or the
10 implementation of government-sponsored flood control programs to reduce risks to people,
11 property, and state interests in the Delta

12 ***Exclusions and Savings Clauses***

13 SBX7 1 includes specific exclusions from the Delta Plan (listed in Wat. Code § 85057.5(b)). Some
14 exclusions blanket a class of continuing actions (e.g., a regulatory action of a state agency or routine
15 maintenance and operation of any facility...owned and operated by a local agency, Wat. Code §
16 85057.5(b)(1) and (5)). Other exclusions are defined as reaching a particular point in time, including
17 Water Code section 85057.5(b)(6) and (7):

- 18 (6) Any plan, program, project, or activity that occurs, in whole or in part, in the Delta, if
19 both of the following conditions are met:
 - 20 (A) The plan, program, project, or activity is undertaken by a local public agency that is
21 located, in whole or in part, in the Delta.
 - 22 (B) Either a notice of determination is filed, pursuant to Section 21152 of the Public
23 Resources Code, for the plan, program, project, or activity by, or the plan, program,
24 project, or activity is fully permitted by, September 30, 2009.
- 25 (7) (A) Any project within the secondary zone, as defined pursuant to Section 29731 of
26 Public Resources Code as of January 1, 2009, for which a notice of approval or
27 determination pursuant to Section 21152 of the Public Resources Code has been filed
28 before the date on which the Delta Plan becomes effective.
 - 29 (B) Any project for which a notice of approval or determination is filed on or after the
30 date on which the final Bay Delta Conservation Plan becomes effective, and before
31 the date on which the Delta Plan becomes effective, is not a covered action but shall
32 be consistent with the Bay Delta Conservation Plan.
 - 33 (C) Subparagraphs (A) and (B) do not apply to either of the following:
 - 34 (i) Any project that is within a Restoration Opportunity Area as shown in Figure 3.1 of
35 *Chapter 3: Draft Conservation Strategy* of the Bay Delta Conservation Plan, August 3,
36 2009, or as shown in a final Bay Delta Conservation Plan.

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1 (ii) Any project that is within the alignment of a conveyance facility as shown in Figures 1
2 to 5, inclusive, of the *Final Draft Initial Assessment of Dual Delta Water Conveyance*
3 Report, April 23, 2008, and in future revisions of this document by the department.

4 (c) Nothing in the application of this section shall be interpreted to authorize the
5 abrogation of any vested right whether created by statute or by common law. The Act
6 also includes “savings” clauses asserting that certain specified statutes are not changed
7 by any provision of the Act (listed in Wat. Code § 85031 and 85322).

8 *Agency Processes for Possible Covered Actions, including Consultations*

9 If an agency correctly determines a proposed action satisfies one of the exclusion or savings clause
10 provisions, it may choose not to consult with the Council and may proceed with the action complying
11 with relevant sections of SBX7 1 and other applicable state laws.

12 A state or local agency contemplating approving or undertaking a project that is potentially or clearly a
13 covered action may contact the Council staff for an early consultation. These consultations should have
14 the goal of understanding the congruence of the proposed action with the Act, using this Interim Plan as
15 the framework for any Council recommendations. Those recommendations should not be binding but
16 should be of value to provide clarification to agencies as to whether or not the Act does potentially
17 apply to a proposed activity and in identifying where such activities appear to comport with provisions
18 of SBX7 1 and where they may encounter potential inconsistencies. The Council's recommendations
19 should not constitute a determination of consistency with, or an exemption from, the yet-to-be adopted
20 Delta Plan. Moreover, any decision may be appealed to the Council by a third party after the Delta Plan
21 is adopted.

22 *Value of Effective Working Relationships, Transparency, and Engagement*

23 The Council seeks strong working relationships with agencies and stakeholders. The relationships
24 developed as the Delta Plan is written and in working through issues under the Interim Plan should be
25 important to the long term relationships of the Council, other agencies, stakeholders, and the public.
26 The Council's goal is to develop an effective Delta Plan that can also serve as many of the missions and
27 goals of other agencies as possible within SBX7 1. Important components of those effective working
28 relationships are procedures that ensure transparency and robust procedures for early consultation that
29 are used consistently.

30 Finally, implementation requires full consideration of public input. Opportunities should be provided for
31 the public to engage in the development and implementation of the Interim Plan.

1 **Section 4. Council Review Process for 2 Early Actions (Wat. Code § 85084)**

3 Water Code section 85084 requires the Council to adopt an "...interim plan that includes
4 recommendations for early actions, projects, and programs." No deadline is provided for completion of
5 the Interim Plan, and no statutory guidance given regarding selection of "early actions, projects, and
6 programs." However, the discussion of "early actions" in multiple arenas before this legislation was
7 adopted suggests attention to "urgent" issues that should be addressed before the Delta Plan is adopted
8 by January 1, 2012. This meaning is consistent with the brief discussion in the available legislative
9 history.²⁸

10 Several early actions are specified in the statute and others have been advanced that appear to require
11 urgent attention as the Delta Plan is being developed. Table 4-1 below lists the early actions, starting
12 with those identified in statute. For those in statute, a code section is provided. For all, a responsible
13 agency is identified, a status report provided, and a schedule proposed for consideration by an "early
14 actions" committee established by the Council and the full Council. More detail on the processes
15 proposed and an application form that project proponents may complete to inform decision making are
16 presented in Table 4-1 and Appendix B.

17 A recommendation by the council for early action is intended to address the urgency of the Delta
18 crisis consistent with SBX7 1, and does not mean that the action will necessarily be included in the
19 Delta Plan, or is otherwise exempt from the definition of "covered action" or the provisions
 governing the consistency of state and local public agency actions with the Delta Plan, once it is
 adopted (Water Code section 85225 et seq.).

28. The full text discussing early actions is: "Early Actions: This bill identifies a series of actions that existing and new agencies need to take as soon as possible – before the Council completes its new Delta Plan. Some actions are administrative. Others are substantive projects for the Delta ecosystem and/or water supply reliability. The early actions part communicates the urgency of responding to the Delta crisis, without waiting for the completion of the new Delta plan."
<http://www.assembly.ca.gov/acs/newcomframeset.asp?committee=26>.

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Table 4-1

Early Actions

Water Code Section ¹	Action	Responsible Agency or Agencies	Status	Potential Council Committee Consideration (2010)	Potential Council Action (2010)
85080	Appoint Independent Science Board	DSC	Completed		June
85082	Engage federal agencies	DSC	Initiated		
85084	Interim Plan	DSC	Complete August 27, 2010		August
85084.5	DFG recommend Delta flow criteria and quantifiable biological objectives, by November 2011	DFG		September	October
85085	DWR shall do all of the following:				
85085 (a)	Coordinate with others to implement Two-Gates Project by December 1, 2010	DWR		September	October
85085 (b)	Evaluate effectiveness of Threemile Slough Project	DWR		September	October
85085 (c)	Expediently move forward with other near term actions identified in the Strategic Plan (listed below)	DWR		September	October
	Obtain needed information on water diversion and use.	DWR		September	October
	Initiate collection of improved socio-economic, ecosystem, and physical structure data about the Delta to inform policy processes and project level decision making by all public agencies, local, state, and federal.	DWR		September	October
	Accelerate completion of in-stream flow analyses for the Delta watershed by the Department of Fish and Game.	DWR		September	October
	Conduct a Middle River Corridor Two Barrier pilot project.	DWR		September	October
	Complete construction of an alternative intake for the Contra Costa Water District.	DWR		September	October
	Evaluate the effectiveness of a Threemile Slough Barrier project.	DWR		September	October
	Construct a demonstration fish protection screen at Clifton Court	DWR		September	October

Table 4-1

Early Actions

Water Code Section ¹	Action	Responsible Agency or Agencies	Status	Potential Council Committee Consideration (2010)	Potential Council Action (2010)
	Forebay (<i>not considered in Delta Vision Committee Implementation Report</i>)				
	Advance near-term ecosystem restoration opportunities.	DWR		September	October
	Stockpile rock and other emergency response materials.	DWR		September	October
	Assess and improve state capacity to respond to catastrophic events in the Delta.	DWR		September	October
85085 (d)	Assist in implementing early action ecosystem restoration projects including, but not limited to, Dutch Slough and Meins Island	DWR		September	October
85086 (a)	The board shall establish effective system for watershed diversion data collection and data collection and public reporting by 12.31.10)	SWRCB		September	October
85086 (b), (c),(d), (e)	Establish instream flow needs for the Delta ecosystem to facilitate planning required to achieve objectives of the Delta Plan	SWRCB		September	October
85087	The board shall submit a prioritized schedule and budget to complete instream flow studies (in cooperation with DFG) by 12.31.10	SWRCB		September	October
Emergency preparation and management (additional to those above)					
	Delta Flood Emergency Preparedness and Response Plan	USACE, DWR, RDs, five Delta counties		October	November
	Delta Region Flood Emergency Response Exercise	DWR in cooperation with other agencies		October	November
	Manage levees and land uses to reduce flood risk and preserve options for flood plain function	DWR and RDs (levees), five Delta counties,		October	November

Table 4-1

Early Actions

Water Code Section ¹	Action	Responsible Agency or Agencies	Status	Potential Council Committee Consideration (2010)	Potential Council Action (2010)
		DPC, and other state agencies (funds, permits)			
Ecosystem restoration (additional to those above)					
	Fish screens, various programs (e.g., Sherman and Twitchell Islands, DFG "Fish Screen and Passage Program")	DFG, USBR, USFWS, others		October	November
Water supply reliability (additional to those above)					
	Local and state contingency plans for loss of Delta water supplies and/or drought (includes Drought Contingency Plan) and changes in programs and regulations to support needed adaptations	DWR, local water districts		October	November
Effective policies and programs under SBX7 1					
	Develop articulation of roles in Suisun Marsh and potential CZMA designation	Council, BCDC		October	November
	Clarify relationship of DPC Land Use and Resource Management Plan to Council responsibilities until Delta Plan adopted	Council, DPC		October	November

Notes:

¹ From SBX7 1

RD = Reclamation District

USACE = U.S. Army Corps of Engineers

1 **Section 5. Analytical Tools for Council 2 Action under the Sacramento-San Joaquin 3 Delta Reform Act of 2009**

4 Section 4 outlined processes the Council would use to provide recommendations on early actions,
5 projects, and programs, and manage its work flow to meet its responsibilities. The goal of this section is
6 to provide a framework for organizing information as a basis for Council action in a wide range of
7 activities under the Interim Plan, some unknowable at this time. Some of the information included is the
8 responsibility of other agencies, but important to the Council meeting its responsibilities. The
9 organization proposed would facilitate communication of measurable progress in meeting the
10 requirements of SBX7 1. The next section outlines procedural steps in Council decision making.

11 The framework relies on seven tools with which to organize and assess critical information:

- 12 • Delta water flows
- 13 • Delta ecosystem restoration plan
- 14 • Indicators of progress in meeting California's future water supply needs on a regional basis
- 15 • Map and table of current levee system integrity
- 16 • Map of planned Delta land uses
- 17 • Finance plan
- 18 • Incorporation of science

19 These seven tools focus on core responsibilities of the Council to achieve the coequal goals and organize
20 much of what would be required for decision making. They do not include all elements required for
21 Council action. The tools miss some dimensions of economic sustainability in the Delta and of progress
22 in implementing improved governance, for example. An effective graphic for some tools can be used to
23 communicate effectively with those relevant to the work of the Council, from agencies to a broad public.
24 Although the graphics are presented here in hard copy, the intent is for these to be digital maps that are
25 updated on a regular basis and that provide links to related information and/or sources.

26 None of the tools would be fully developed by August 27, 2010, when the Interim Plan is scheduled to
27 be adopted by the Council. However, even in incomplete form, they would inform Council work under
28 the Interim Plan and may be amended over time.

29 **Delta Water Flow**

30 The Delta flow criteria developed by the SWRCB under Water Code section 85086 with contributions of
31 the DFG under section 85084.5 were adopted on August 6, 2010. Over time, additional information on
32 flows would be developed, including whatever results from the BDCP, plus the additional instream flow
33 studies required by section 85087. The SWRCB has adopted a Strategic Workplan that lays out a
34 sequence of additional work relevant to understanding and regulating water flows. Among these, water
35 quality requirements must be incorporated by the SWRCB under section 85086 and can be updated as

1 those regulations change. The Delta Plan must include plans to “... promote options for new and
2 improved infrastructure relating to the water conveyance in the Delta, storage systems, and for the
3 operation of both to achieve the coequal goals” (§ 85304).

4 **Delta Ecosystem Restoration Plan**

5 Actions taken to restore the Delta ecosystem are expected to include at least changes in water flows,
6 water quality, and land forms and uses (§ 85023, 85084.5, 85302(c)(e)). The CALFED Ecosystem
7 Restoration Program provides tools and processes for evaluating and guiding decision making about
8 restoration actions under the Interim Plan. These include the program’s Strategic Plan and the Delta
9 Regional Ecosystem Restoration Implementation Plan conceptual models. Summary information on
10 progress on ecosystem restoration will not be easily captured in maps, so other graphic formats will be
11 required. One option is to organize reports in bar chart formats or line graph by performance measures.
12 The *Delta Vision Strategic Plan* includes approximately 40 ecosystem performance measures,²⁹ more
13 than can be easily understood in public policy making processes, but they are organized around five
14 policy strategies. To the extent possible, these (or other) measures of ecosystem function can be
15 combined into summary indices, maintaining the detailed information for use when needed.

16 **Indicators of Progress in Meeting California’s 17 Future Water Supply Needs on a Regional Basis**

18 This tool is intended to summarize progress in satisfying Water Code section 85021, which states: “The
19 policy of the State of California is to reduce reliance on the Delta in meeting California’s future water
20 supply needs through a statewide strategy of investing in improved regional supplies, conservation, and
21 water use efficiency. Each region that depends on water from the Delta watershed shall improve its
22 regional self-reliance for water through investment in water use efficiency, water recycling, advanced
23 water technologies, local and regional water supply projects, and improved regional coordination of
24 local and regional water supply efforts.” This would require information about the regional efforts listed,
25 and the graphic on statewide diversions developed for the *Delta Vision Strategic Plan* (included here as
26 Figure 5-1) is illustrative as an effective graphic that the Council could use as a possible starting point to
27 demonstrate regional progress toward self-sufficiency.

28

²⁹ See *Delta Vision Strategic Plan* performance measures for Goal 3, “Restore the Delta ecosystem as the heart of a healthy ecosystem,” pages 67-91. Delta Vision Blue Ribbon Task Force, 2008.

1 **Figure 5-1**

2 **Statewide Upstream and Export Diversions from the Delta Watershed (Illustrative)**

3 *Source: Delta Vision Strategic Plan, 2008*



1 Map and Table of Current Levee System Integrity

2 All current human uses of the Delta lands require a certain level of protection against river flooding, sea
3 level rise, and earthquakes. To that end, continued state investment in levees under the DWR
4 Subvention Program is expected, for example, and warrants support.

5 The Interim Plan must ensure progress toward congruence between the uses and resources at risk and
6 the levees that provide protection. Existing levees have been developed over decades, initially without
7 design standards and then to a succession of standards developed by federal and state agencies. Local
8 reclamation districts, local engineers, and local land owners responsible for much maintenance of levees
9 are interested participants in the evolution of levee standards. Pending the development of more
10 detailed information on levee conditions and policies required under section 85306, this Interim Plan
11 uses the levee classification system initiated during development of the *Delta Vision Strategic Plan*, and
12 now modified for use by DWR and others. This classification table, Table 5-1, organizes levee standards
13 from lowest to highest levels of protection offered. As noted in one comment received on the second
14 draft Interim Plan, there is no levee classification specific to those levees playing a role in water supply.

15 Table 5-1 shows all nine classes of levees currently used in discussions of Delta levee policies. Levee
16 improvement activities are now particularly dynamic, with evolving thought (especially by DWR) toward
17 implementing approaches as mandated by recent legislation, recognition of special problems (such as
18 seismic vulnerability), recent program changes (such as FEMA's levee recertification requirement) and
19 the availability of additional resources from Propositions 84 and 1E.³⁰ Two classifications identify
20 changes required or underway:

- 21 • **Legacy Towns (Class 5).** As a result of the emphasis on maintaining the unique culture of the Delta
22 and also because several communities in the Delta may not requalify for FEMA certification, and
23 because of increased awareness of Delta seismic vulnerability, protection for small Delta
24 communities with distinct natural, agricultural, and cultural heritage (Legacy Towns or Legacy
25 Communities) is receiving attention. The specific approach has not yet been established, but could
26 include increased freeboard (3 feet) for protective PL 84-99 Delta Specific or non-urban project
27 levees and might include special levee configurations such as ring levees. Additional design features
28 must be considered to provide life-safety protection in the event of major levee failures from
29 earthquake or other causes.
- 30 • **Urban Project Levees (Class 7-8).** With the passage of Senate Bill 5 mandating 200-year flood
31 protection for urban areas and the availability of resources through bond funding, FloodSAFE has
32 initiated an aggressive program of levee improvement focused on state-federal flood control Project
33 levees that protect urban and urbanizing areas. An urban area is defined as a developed area in
34 which there are 10,000 residents or more. An urbanizing area is a developed area or an area outside
35 a developed area that is planned or anticipated to have 10,000 residents or more within the next 10
36 years. DWR/FloodSAFE (2009) has issued "Proposed Interim Levee Design Criteria for Urban and
37 Urbanizing Area State-Federal Project Levees." These criteria not only require 200-year flood
38 protection, they also require consideration of seismic stability under a 200-year earthquake.
39 Specifically:

³⁰. Department of Water Resources. "Proposed Interim Levee Design Criteria for Urban and Urbanizing Area State-Federal Project Levees. Third Draft." [http://www.water.ca.gov/floodsafe/docs/Third_Draft_Interim_Levee_Design_Criteria_\(May_15,_2009\).pdf](http://www.water.ca.gov/floodsafe/docs/Third_Draft_Interim_Levee_Design_Criteria_(May_15,_2009).pdf)

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1 “For levees subject to seasonal high water that are planned for repair or improvement
2 and that are also found to be vulnerable to seismic damage, the repair or improvement
3 alternative that is most resistant to seismic damage and/or easily and economically
4 repaired following an earthquake should be selected over other cost-comparable
5 alternatives (e.g., a berm is preferable to a cost-comparable slurry wall). If seismic
6 damage is expected after all 200-year flood improvements are in place, a post-
7 earthquake remediation plan will be required for quickly restoring the levee system’s
8 grade and dimensions sufficient for protection against the 10-year flood, with 3 feet of
9 freeboard, or higher as needed for 10-year wave run up. To the extent that seismic
10 damage to the levee system would be so significant and widespread that it would be
11 infeasible to restore 10-year protection within a few months, seismic strengthening may
12 be required for 200-year certification. Levees subject to frequent high water, such as
13 many levees in the Delta, would need seismic stability sufficient to maintain a 10-year
14 level of flood protection during and immediately after the earthquake.”

15 Based on this approach, two “seismic” levee classifications have been identified – one for repairable
16 levees (to be partially repaired after seismic damage before the next flood season) and the other for
17 robust levees, designed to survive the earthquake retaining an acceptable portion of their flood
18 protection capability. Incorporating seismic risks into levee designs is important in the Delta as
19 recognized in interim design criteria being developed by DWR. This is a challenging task as there is
20 limited experience with the performance of levees designed to these standards.

21 Levee classifications are used to judge whether existing or contemplated land uses are appropriately
22 protected and Table 5-1 illustrates such relationships. Estimates of current levels of protection for each
23 actual area of the Delta must be developed based on the best information available.

Table 5-1
Delta Levees Classification and Suitability

Delta Levee Classification	Description	Delta Levee Suitability				Adopted or Proposed Design Criteria
		Habitat	Agricultural	Infrastructure	Populated	
Class 1	No Design Requirement ¹	✓	●	Not suitable (N/S)	(N/S)	Typical height is less than 8 feet. Crest width is 12 feet or less. Exterior and interior slopes, assume 2H:1V. No seismic capability. Freeboard varies but levee is usually overtopped for water level with 1% annual frequency (i.e., 100-year average return period or 100-year flood). Expect frequent failure.
Class 2	HMP ²	✓	*	●	(N/S)	16 foot crest width. All-weather patrol road. Exterior slope (1.5H:1V). Interior slope (2H:1V). Marginal static stability (FS = 1.1+/-). No seismic capability. Freeboard = 1.0 foot (for water level with 1% annual frequency or 100-year flood).
Class 3	PL 84-99 (DS) ³	✓	✓	*	(N/S), ● ⁴	16 foot crest width. All-weather patrol road. Exterior slope (2H:1V). Interior slope (2H:1V to 5H:1V), based on levee height and depth of peat. Static stability (FS = 1.25). Levee toe drain 30 feet landward. Essentially no seismic capability. Freeboard = 1.5 feet (for 1% annual frequency or 100-year flood).

Class 4	PL 84-99 (Non-urban, Project Levee)	✓	✓	*	(N/S) ⁴	16 foot crest width. All-weather patrol road. Exterior slope (2H:1V). Interior slope (generally 3H:1V or less steep), based on USACE original site-specific design. Static stability (FS = 1.4+). Levee toe drain or seepage control berm. Very little seismic capability. Freeboard = 1.5 feet (for 1% annual frequency or 100-year flood), possibly with additional freeboard for waves.
Class 5 (under development)	Legacy Town	✓	N/A			Not yet established. Major issues need to be resolved.
Class 6	FEMA - 100 Yr ⁵	✓	✓	*	*	16 foot crest width. All-weather patrol road. Toe drain. Exterior Slope (2H:1V). Interior Slope (varies, stability/seepage, 3H:1V to 5H:1V). Static stability (FS = 1.4 to 1.9). Seepage exit gradient ≤ 0.5 . (FS and Seepage per USACE documents). Very little seismic capability. Freeboard = 3.0+ feet (for 1% annual frequency or 100-year flood).
Class 7 (under development, SB 5 requires; in use for early implementation funding)	DWR - 200 Yr Urban (Seismic Repairable) ⁶	✓	✓	✓	✓	Designed per DWR "Proposed Interim Levee Design Criteria for Urban and Urbanizing Area State-Federal Project Levees" (3rd draft, May 15, 2009). Freeboard approx 3.0 feet (for 0.5% annual frequency or 200-year flood). Seismic design for 200-year earthquake; if hydraulically loaded only seasonally, must be repairable for 10% annual flood (i.e., 10-year flood) within a

Class 8 (under development, SB 5 requires; in use for early implementation funding)	DWR - 200 Yr Urban (Seismic Robust) ⁶	✓	✓	✓	✓	Designed per DWR "Proposed Interim Levee Design Criteria for Urban and Urbanizing Area State-Federal Project Levees" (3rd draft, May 15, 2009). Freeboard approx 3.0 feet (for 0.5% annual frequency or 200-year flood). Seismic design for 200-year earthquake; if subject to frequent high water (as in Delta), must be survive earthquake with flood protection for 10% annual probability (10-year) high water level.
Class 9	Seismic Super Levee	✓	✓	✓	✓	Wide crest (as much as 200 feet). All weather road(s) on crest. Other design factors similar to or stronger than seismically robust above.

Notes:

1. Class 1 levees are expected to allow periodic flooding. They may serve the needs of habitat or some agriculture (e.g., pasture). There is no specific design criterion.
2. HMP indicates "Hazard Mitigation Plan" representing the minimum levee design requirement for an island to be eligible for Federal Emergency Management Agency disaster assistance.
3. PL84-99 (DS) indicates the USACE's "Delta Specific" design requirements issued in 1987 for eligibility in the PL84-99 Rehabilitation and Inspection Program (RIP).
4. Class 3 and 4 levees are unsuitable for DWR-defined urban or urbanizing areas (population of 10,000 or more or expected to have 10,000 or more within the next 10 years). They have substantial residual risk of flooding and are of questionable suitability, even for lower levels of population.
5. FEMA - 100 Yr indicates the Federal Emergency Management Agency levee design requirement for excluding the protected area from the Flood Insurance Rate Map determination of the Special Flood Hazard Area (100-year floodplain).
6. For Class 7 & 8 levees DWR's draft interim 200-year design criteria for urban and urbanizing area project levees has been developed for use in implementing FloodSAFE projects, responsive to the requirements of Senate Bill 5 for 200-year protection.
7. ● indicates substantial residual risk of flooding, partly due to the multiple hazards unique to the Delta and considering the consequences of flooding to the indicated land use. Suitability is questionable and, at best, marginal.
8. * indicates a significant residual risk of flooding and a basis for questioning suitability.
9. ✓ indicates "suitable," but even these levees have a residual risk of flooding.

Sources: (The list will be expanded with requests to agencies and interested parties)

1. Sacramento-San Joaquin Delta Atlas, California Department of Water Resources, Reprinted, July, 1975, <http://bsydeltaoffice.water.ca.gov/DeltaAtlas/index.cfm>
2. Delta Risk Management Strategy Phase I, California Department of Water Resources, URS Corporation, Jack R. Benjamin Associates, Inc., February, 2009. http://www.water.ca.gov/floodmgmt/dsimo/sab/drmsp/phase1_information.cfm
3. Delta Risk Management Strategy Phase I, DRAFT Levee Optimization Spreadsheets (unpublished) 2008. (Information extracted and summarized from Phase 1 Technical Memoranda).
4. USGS 7.5 minute quadrangle 1:24000-scale topographic maps, various dates.
5. Google Earth (R) imagery and mapping, various dates.

1 Maps of Intensity of Land and Resource Uses

2 One of the primary goals of SBX7 1 is to achieve more effective integration of land and resource use
3 policies in the Delta, reflected in the very first section of the act, Public Resources Code section 29702,
4 every clause of which affects land and resource uses in the Delta and all of which are further developed
5 in other sections of the Act:

6 Section 29702. The Legislature further finds and declares that the basic goals of the
7 state for the Delta are the following:

- 8 (a) Achieve the two coequal goals of providing a more reliable water supply for
9 California and protecting, restoring, and enhancing the Delta ecosystem. The
10 coequal goals shall be achieved in a manner that protects and enhances the unique
11 cultural, recreational, natural resource, and agricultural values of the Delta as an
12 evolving place.
- 13 (b) Protect, maintain, and, where possible, enhance and restore the overall quality of
14 the Delta environment, including, but not limited to, agriculture, wildlife habitat,
15 and recreational activities.
- 16 (c) Ensure orderly, balanced conservation and development of Delta land resources.
- 17 (d) Improve flood protection by structural and nonstructural means to ensure an
18 increased level of public health and safety.

19 Many plans and projects can affect the land forms and
20 intensity of land and resource use in the Delta, including
21 work on flood management policies affecting levees; flood
22 ways and allowable land uses; patterns of land use allowed
23 under the policies of the DPC and local governments;
24 ecosystem restoration projects, including those in which the
25 Delta Conservancy is a party; improved water conveyance;
26 and other infrastructure investments. Among the existing
27 plans shaping land uses in the Delta are county and city
28 general plans and zoning, county Habitat Conservation Plans,
29 and the DPC Land Use and Resource Management Plan,
30 among others.

The maps developed for use here must integrate the various policies affecting land uses in the Delta in one or more intelligible graphics showing land uses that will result from those policies. One possible way to do so is as one or more overlays on existing land uses. No existing Delta map has yet been identified to serve as a starting point for this graphic.

31 One approach to mapping is to work at two levels, first, Delta-wide to provide for overview and
32 connectivity and, second, at a local level, where actions and proposals can be seen in detail.³¹

33 The maps for use by the Council should serve the following purposes:

- 34 • Transparency. Provide a quick reference to key features, proposals, and actions in play.

³¹ An example of localized mapping can be seen in Bay Conservation and Development Commission's San Francisco Bay Plan, http://www.bcdc.ca.gov/laws_plans/plans/sfbay_plan.shtml.

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- 1 • Explanation and clarification. Attempt to demystify the complexities of Delta planning and
2 management. Provide links to further information.
- 3 • Geo-referencing. Show where things will happen in relation to each other, surrounding issues, and
4 to Delta conditions.
- 5 • Connectivity. Show how proposals may be mutually supportive or possibly in conflict.
- 6 • Implications. Provide a vehicle for showing the location and implications of Delta Plan
7 recommendations as they are developed; at a more precise level of detail than Delta-wide mapping
8 and graphics.

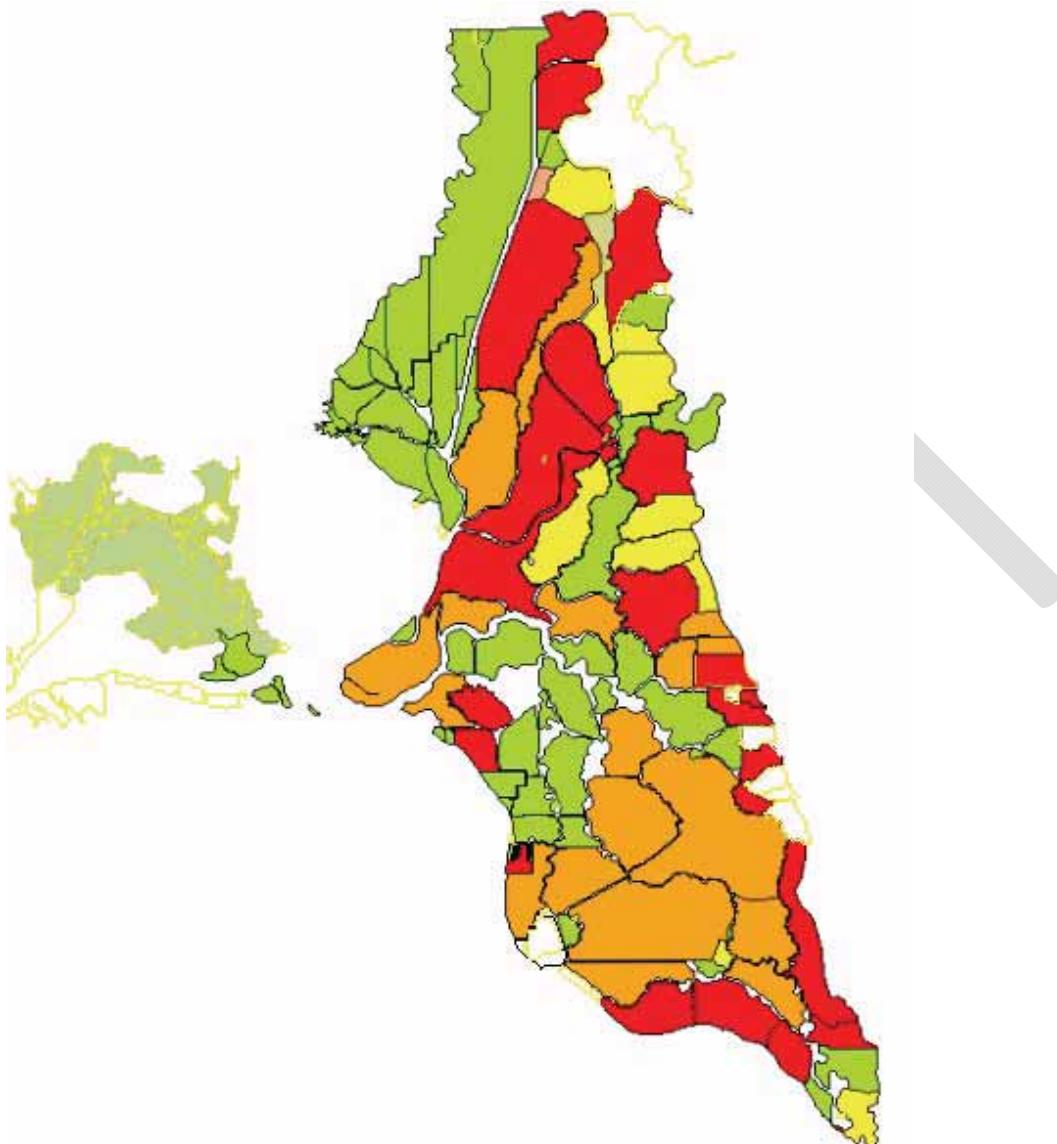
9 The following features could be represented by icons on the map and keyed to short descriptions with
10 web links to reports or data:

- 11 • All proposed near-term actions
- 12 • BDCP or Ecosystem Restoration Program eco-restoration target areas
- 13 • Eco-restoration projects under way (levee breach experiments, shallow water habitat projects),
14 including CALFED grant projects that have been geo-referenced with a link to reports and
15 publications
- 16 • Levee design projects (e.g., Twitchell Island setback levee program)
- 17 • Water conveyance and management features (Delta Cross-channel, proposed temporary barriers,
18 proposed gates)
- 19 • Water quality monitoring points
- 20 • Flow monitoring points
- 21 • Water intakes and diversion points
- 22 • Outfalls
- 23 • Recreation facilities
- 24 • Projects covered by BDCP (Isolated facility routes and intakes, barriers, pump upgrades, cooling
25 water diversion)

26 The map in Figure 5-2 that follows summarizes available information on current intensity of land and
27 resource uses, categorized in four groups reflecting increasing intensity/value of assets, applied at the
28 level of islands.

1 **Figure 5-2**

2 **Example of Current Simplified Intensity of Uses in the Delta and Suisun Marsh (DRAFT)**



3

Symbol	Acronym	Intensity of Use
AC	Ag/Cons	Low: Ecosystem, recreation, extensive agriculture
IA	Intensive Ag/Infra	Moderate: Intensive agriculture, vineyards, orchards, less than 30 residences, flood-tolerant infrastructure
ARI	Ag/Res/Infra/Mixed	Significant: 30 to 100 residences, and/or State Highway, Railroad, or gas; flood-intolerant infrastructure
POP	Populated/Res/Coml	High: more than 100 residences and/or commercial or industrial uses
Blank	Blank	Further information needed (boundaries, nomenclature, recent changes)

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Notes:

This classification of intensity of use does not include the presence or absence of natural gas wells, as it assumed for this report that gas fields can withstand temporary inundation. Potential impacts of inundation on water quality and salinity intrusion, although important, are not included in this classification of use intensity.

Sources:

Sacramento-San Joaquin Delta Atlas, DWR, Reprinted July, 1995. <http://baydeltaoffice.water.ca.gov/DeltaAtlas/index.cfm>

Delta Risk Management Strategy Phase I, DWR, URS Corporation, Jack R. Benjamin Associates, Inc., February, 2009.
http://www.water.ca.gov/floodmgmt/dsmo/sab/drmsp/phase1_information.cfm

Delta Risk Management Strategy Phase I, DRAFT Levee Optimization Spreadsheets (unpublished) 2008.

Intensive agriculture categories (vines, orchards, citrus) from: (1) California Department of Fish and Game digital files generated from vegetation mapping conducted between 2002 and 2005, derived from field data collected in the summer of 2005. The 2002 Stockton, Sacramento, and Delta High Resolution (1-foot) Orthoimagery and 2005 NAIP (1-meter) Orthoimagery served as the base; and (2) KML files generated from land use mapping by DWR in 2007, areas covered in the California Delta and Suisun Marsh, released by DWR in April, 2008.

USGS 7.5 minute quadrangle 1:24,000-scale topographic maps, 35 maps, various dates; available online at: <http://bios.dfg.ca.gov/>
Google Earth (R) imagery.

- 1 Over time, maps of intensity would be evaluated in relation to a map and table of levee system integrity
- 2 to ensure progress toward congruence among uses, risks, and levels of protection.

3 Finance Plan

4 SBX7 1 does not address financing operations of the Council, the Delta Conservancy, or the DPC, nor
5 does it provide financing for actions recommended by these entities. The Legislature may act on this
6 issue separately, as seen in current consideration of AB 2092 (Huffman). The issue of adequate financing
7 must be addressed. The *Delta Vision Strategic Plan* includes one strategy (7.3) and three related actions
8 (7.3.1, 7.3.2, and 7.3.3)³² that must be considered in developing the Delta Plan. The *Delta Vision*
9 *Committee Implementation Report* supported strategy 7.3 but offered no comments on these (or any)
10 actions.³³

11 The Interim Plan can make progress on two important beginning points in a finance plan: (1) beginning
12 to develop accurate and complete information on current finances and (2) initiating discussion of long-
13 term financing to support activities under the Act.

14 No accurate and complete accounting of the finances of public activities in the Delta exists and the
15 creation of the first compilation of these data should be given high priority. Table 5-2 begins this effort,
16 drawing initially on a 2005 report of the Department of Finance Office of State Audits and Evaluations.³⁴
17 Additional data are being assembled to complete this table.

18 As with measures of ecosystem restoration, the useful graphic on existing finances here is unlikely to
19 take the form of a map. Instead, some combination of bar charts and/or stacked trend lines that capture
20 current financial flows by source and purpose and provide a good foundation for decisions about future
21 financial investments is likely to be more useful.

³² Delta Vision Blue Ribbon Task Force. 2008. *Delta Vision Strategic Plan*. Pages 133-137.

³³ *Delta Vision Committee Implementation Report*. 2008. http://deltavision.ca.gov/DV_Committee/Jan2009/08-1231_Delta_Vision_Committee_Implementation_Report.pdf

³⁴ Department of Finance, Office of State Audits and Evaluations. *California Bay-Delta Authority Fiscal Review*. 2005. http://www.dof.ca.gov/osae/audit_reports/documents/CBDA_Fiscal-Review_Final.pdf

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Table 5-2

Finances of Activities in the Delta (Under Development)

Expenditures in the Delta	Annual averages (\$)				
	Prior to CALFED ROD (4 years)	Fiscal Years 00-01 through 03-04 (First 4 years of ROD)	Fiscal Years 04-05 through 08-09	Budgeted Fiscal Year 09-10	Proposed Fiscal year 10-11
Through CALFED/Council					
Sources of financing					
State general fund (and other state funds)		56,770,245	81,662,090	13,405,835	13,710,835
State bonds		208,776,375	883,288,123	833,679,977	173,422,539
Water users/local funding		308,361,578	445,898,000 ^{1,2}	0 ³	0
Federal government		60,613,750	427,035,719	81,040,221	135,509,000
Major uses of funds					
Water related		223,503,066	1,157,659,105	382,506,283	172,965,131
Ecosystem related		213,448,464	439,168,889	116,739,448	175,271,657
Levees		19,413,150	197,920,384	492,062,101	22,719,000
Oversight/coordination		7,080,189	42,919,986	10,099,000	13,823,000
Science		10,601,544	135,832,343	33,165,869	29,021,530
Uncategorized		26,379,850	11,497,720	11,214,000	23,214,000
Total, Through CALFED/Council	112,065,242	632,021,948	1,984,998,426	1,045,786,701	437,014,319
Other					
US Army Corps of Engineers, may be included above ⁴					44,104,000
Local reclamation districts, estimated ⁵					33,565,829
Other					

Notes:

1. The \$445,898,000 figure representing Water Users/Local Funding under the 2004-05 through 2008-09 column represents only the 2004-05 fiscal year.

2. There is no systematic local funding data in the system post 2004-05. There is additional local funding reported in the 2006 and 2007 annual reports for the Water Use Efficiency Program Element: 2005-06 fiscal year reported \$167,100,000 local funding; 2006-07 fiscal year reported \$146,000,000 local funding.

3. The \$0 dollar amounts representing Water Users/Local Funding for the 2009-10 and 2010-11 fiscal years is due to the following: (a) No local

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funding data collected during these timeframes, (b) the SWP funding amounts are represented in the SWP funding source and the Central Valley Project Improvement Act funding amounts are represented in the federal government funding source.

4. Derived from US Army Corps of Engineers. *Fiscal Year 2001 Civil Works Budget for the U.S. Army Corps of Engineers Summary, February 2010.* Includes construction and operations and maintenance funds for projects apparently in the legal Delta (needs confirmation). <http://www.usace.army.mil/CECW/PID/Documents/budget/budget2011.pdf>. page 13.

5. Actual data requested from State Controller. This is estimate of 75 percent of total expenditures of all reclamation and levee districts in the state, less state funds received (to avoid probable double counting with bond funds above). State Controller. *Special Districts Annual Report, Fiscal Year 2008-09*, Table 9. <http://www.sco.ca.gov/Files-ARD-Local/LocRep/0708specialdistrictosp.pdf>.

Sources:

Columns 1-2: California Department of Finance. *A Fiscal Review of the CALFED Bay-Delta Program: Summary of Expenditures as of September 30, 2004.* http://www.dof.ca.gov/osae/audit_reports/documents/CBDA_Fiscal-Review_Final.pdf;

Columns 3-5: Provided by Council staff from CALFED Project Performance Information System, July 9, 2010.

- 1 A financing plan would be developed for consideration during development of the Delta Plan. The
2 financing plan would contain options for support of the Council and the Science Program, the Delta
3 Conservancy, program expenditures, and project funding.
- 4 The funding needed for the purposes associated with SBX7 1 is large. The *Delta Vision Strategic Plan*
5 summarized information available in 2008 as follows: “These estimates by entities other than the Task
6 Force suggest that capital expenditures required for the Delta in the next 10 to15 years could range
7 from \$12 billion to \$24 billion, with a high estimate of \$80 billion. The annual operating costs of the ...
8 Council are unknown.”³⁵ The BDCP process has recently released updated estimates of the capital costs
9 of alternative conveyance to range from \$10 billion to \$12 billion, an increase of at least 20 percent over
10 estimates of 2008. Operations and maintenance would total an addition \$586 million over 50 years. That
11 same update includes estimated ecosystem related projects total from \$16.2 billion to \$16.5 billion over
12 50 years, and projected \$231 million in expenditures for operations of the BDCP management entity.³⁶
13 The BDCP-projected ecosystem restoration costs should not be considered the total amounts needed for
14 improved ecosystem restoration under SBX7 1, but rather a summation of ideas and proposals selected
15 as components of the BDCP process.
- 16 Water Code section 85300(a) states the Council “...shall consider each of the strategies and actions set
17 forth in the Strategic Plan and may include any of those strategies or actions in the Delta Plan...” The
18 *Delta Vision Strategic Plan* and the *Delta Vision Committee Implementation Report* both include the
19 same strategy regarding financing, “Strategy 7.3: Finance the activities called for in the California Delta
20 Ecosystem and Water Plan from multiple sources.” The *Delta Vision Strategic Plan* expanded on this
21 strategy with three actions, the specifics of which would be considered in developing the finance plan:
- 22 **Action 7.3.1:** Enact a series of principles regarding design of financing into legislation
23 authorizing the California Delta Ecosystem and Water Council.
- 24 **Action 7.3.2:** Establish a base of revenues outside the state General Fund for the work
25 of the California Delta Ecosystem and Water Council, the Delta Conservancy, the Delta
26 Protection Commission, and related core activities of the Department of Fish and Game,
27 the Department of Water Resources, and the State Water Resources Control Board.

³⁵ . Delta Vision Blue Ribbon Task Force, 2008. *Delta Vision Strategic Plan*, page 134.

³⁶ . Bay Delta Conservation Plan. Unedited Draft Chapter 8: Implementation Costs and Funding Sources. July 14, 2010. <http://baydeltaconservationplan.com/SteeringCommitteeLibrary/7.15.10%20SC%20HO%20Chapter%208%20Implementation%20Cost.pdf>

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1 **Action 7.3.3:** Find new revenue sources beyond the traditional bond funds or public
2 allocations.

3 To initiate the analysis, three alternative scenarios are explored:³⁷

- 4 • Existing financing sources (assuming no replacement of existing bond financing)
- 5 • Enhanced financing reliant solely on general fund and other broad-based funding sources, such as
6 additional general obligation bonds
- 7 • Enhanced financing with significant portions of the total funds (including revenue bonds) coming
8 from users; such funding may be based on stressors on the ecosystem, water supply, and other
9 facilities, and will consider those who benefit directly

10 ***Existing financing sources (assuming no replacement of existing bond
11 financing)***

12 As shown in Table 5-2, current funding for the Council includes almost \$14 million from the state general
13 fund (and other state funds), considerably reduced from appropriations from this source under CALFED
14 (approximately four times larger in fiscal years 01 through 04 and six times as large in fiscal years 05
15 through 09). State bonds support more than \$173 million in CALFED expenditures, and the federal
16 government supports another \$136 million. The state bond expenditures are substantially reduced from
17 prior levels and the federal expenditures are lower than the peak, but higher than two earlier periods.
18 Data for financing from water users and local funding is no longer systematically collected, but it has
19 represented large amounts of funding in the past.

20 Looking forward, it is well known that the general fund of the state is structurally imbalanced, with the
21 Legislative Analyst projecting "...a stubborn annual gap between current-law revenues and expenditures
22 of about \$20 billion for each year through at least 2014-15."³⁸ Given this projected deficit, general fund
23 appropriations for the Council and activities related to implementation of SBX7 1 would be very
24 challenging for several years.

25 California voters approved seven resources bonds between 1996 and 2006, totaling almost \$21 billion,
26 but almost \$17 billion of these bonds have been obligated. Much of the remaining funds available for
27 appropriation are targeted on flood management under Proposition 1E (about \$1.5 billion) and water
28 quality and water management (including about \$750 million from Proposition 84).³⁹ This suggests that
29 bond funding would continue to be available for these areas of activity related to the Council's
30 responsibilities and SBX7 1, but would diminish over time. Arithmetically, the level of state bond
31 appropriations projected for fiscal year 2011-12 could be sustained for approximately 13 years.

37 . An overview of financing issues is presented in Legislative Analyst's Office. *Delta Vision: Financing Issues*. Presented to the Assembly Water, Parks and Wildlife Committee. February 24, 2009.

38 :Legislative Analyst's Office, Legislative Office Staff. 2010. *March 2010 Fiscal Update*.
http://www.lao.ca.gov/analysis/2010/2010_pandi/fiscal_update_memo_031910.pdf. page 4.

39 Legislative Analyst's Office. *The 2010-11 Budget: Resources and Environmental Protection*. 2010.
http://www.lao.ca.gov/analysis/2010/resources/res_anl10.pdf.

1 ***Enhanced financing reliant solely on general fund and other broad-based***
2 ***funding sources, such as additional general obligation bonds***

3 Given the analysis above regarding the structural deficit in the general fund and the weak state of the
4 California economy, for the foreseeable future it is unrealistic to expect enhanced financing based solely
5 on the general fund. This statement applies also to other broad-based funding sources, such as general
6 obligation bonds. The delay of a vote on the water bond included in the November 2009 legislative
7 package is evidence of this reality.

8 ***Enhanced financing with significant portions of the total funds (including***
9 ***revenue bonds) coming from users; such funding may be based on***
10 ***stressors on the ecosystem, water supply, and other facilities, and would***
11 ***consider those who benefit directly***

12 Funding derived from users has long been a feature of water project funding, and some ecosystem
13 restoration has been funded as mitigation for projects, including water projects. The *Delta Vision*
14 *Strategic Plan* and the *Delta Vision Committee Implementation Report* both advocate user financing of
15 activities. As seen in Table 5-2, expenditures funded by water users and local sources provided hundreds
16 of millions annually for CALFED projects. At a smaller scale, existing county Habitat Conservation Plans in
17 the Delta rely on mitigation fees for ecosystem restoration. User funding for core policy making and
18 science, or securing sufficient funding for large-scale ecosystem restoration, has not been easy,
19 however. Notably, the Legislature failed to include funding sources in SBX7 1.

20 However, there is growing attention to fees in state finance, as evidenced in this recommendation by
21 the Legislative Analyst to policy makers considering budget solutions: “Are there ways to minimize the
22 programmatic effect? For instance, are fees or other alternative revenues potentially available?”⁴⁰

23 Several fee proposals have been advanced; some workable package of such fees must be developed to
24 support implementation of SBX7 1. In the past few years, scientific understanding of the range of actions
25 that affect water flows and ecosystem function in the Delta has become more sophisticated. Increased
26 scientific understanding also has revealed a higher number of stressors on the Delta. This affords
27 opportunities for more effectively achieving the coequal goals and also for developing a financing
28 system. A user-based funding system that includes some broad measures of resource use and also
29 targets specific stressors for fee payments is a possible starting point that can be adjusted over time
30 based on experience gathered on the amounts of revenue generated and the effects of fees on
31 behaviors.

32

Incorporation of Science

33 The Delta Reform Act includes provisions for a Delta Independent Science Board, a lead scientist, and a
34 Delta Science Program (Wat. Code § 85280). The Council appoints members of the Delta Independent
35 Science Board and, in consultation with that board, the lead scientist for the Delta Science Program.

40 . Legislative Analyst's Office. *Overview of the Economy, Revenues, and Spending*. June 3, 2010.
http://www.lao.ca.gov/handouts/conf_comm/2010/060310_Conference_Committee.pdf.

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1 The work of these bodies becomes a foundation upon which not only the Council, but other agencies,
2 businesses, and individuals understand the Delta and inform discussions of strategies and actions
3 intended to achieve various policy goals. This is succinctly stated in the Delta Reform Act:

4 85280(a)(3) The Delta Independent Science Board shall provide oversight of the
5 scientific research, monitoring, and assessment programs that support adaptive
6 management of the Delta through periodic reviews of each of those programs that shall
7 be scheduled to ensure that all Delta scientific research, monitoring, and assessment
8 programs are reviewed at least once every four years.

9 (4) The Delta Independent Science Board shall submit to the council a report on the
10 results of each review, including recommendations for any changes in the programs
11 reviewed by the board....

12 (b) (4) The mission of the Delta Science Program shall be to provide the best possible
13 unbiased scientific information to inform water and environmental
14 decisionmaking in the Delta. That mission shall be carried out through funding
15 research, synthesizing and communicating scientific information to
16 policymakers and decisionmakers, promoting independent scientific peer
17 review, and coordinating with Delta agencies to promote science-based
18 adaptive management. The Delta Science Program shall assist with development
19 and periodic updates of the Delta Plan's adaptive management program.

20 Over time, the body of scientific understanding of the Delta and of the effects of various policies have
21 powerful effects in shaping policy making options. This was demonstrated under the CALFED Science
22 Program and is expected to continue, where activities such as the Biennial Bay-Delta Science Conference
23 stimulate public discussion of recent scientific work and publication of the bimonthly *Science News* and
24 occasional major syntheses such as *The State of Bay-Delta Science, 2008*, make the science more
25 accessible to policy makers and stakeholders.

1 Acronyms and Abbreviations

2	Act	SBX7 1, enacted in November 2009. See below.
3	BDCP	Bay-Delta Conservation Plan
4	Council	Delta Stewardship Council
5	CVP	Central Valley Project
6	CZMA	Coastal Zone Management Act
7	Delta	Sacramento-San Joaquin River Delta and Suisun Marsh (Wat. Code § 85058)
9	Delta Reform Act	Sacramento-San Joaquin Delta Reform Act of 2009, Division 35 of the Water Code (§ 85000 through 85350)
11	Delta watershed	Sacramento River hydrologic region and the San Joaquin River hydrologic region as described in DWR's Bulletin No. 160-05 (Wat. Code § 85060)
14	DFG	California Department of Fish and Game
15	DPC	Delta Protection Commission
16	DWR	California Department of Water Resources
17	EIR	Environmental Impact Report
18	EIS	Environmental Impact Statement
19	FEMA	Federal Emergency Management Agency
20	NOAA	National Ocean and Atmospheric Administration
21	NRC	National Research Council
22	Reclamation	U. S. Bureau of Reclamation
23	ROD	Record of Decision
24	SBX7 1	Senate Bill 1 of the 2009-10 7th extraordinary session, including revisions to Public Resources Code regarding the Delta Protection Commission at sections 29702 through 29780, adding Division 22.3 (commencing with § 32300) to the Public Resources Code creating the Delta Conservancy, and adding Division 35 (commencing with § 85300) to the Water Code, the Sacramento-San Joaquin Delta Reform Act of 2009
31	Strategic Plan	Both the <i>Delta Vision Strategic Plan</i> (2008) and the <i>Delta Vision Implementation Report</i> (2008) (Wat. Code § 85067)
33	SWP	State Water Project

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- | | | |
|---|-------|--|
| 1 | SWRCB | California State Water Resources Control Board |
| 2 | USACE | U.S. Army Corps of Engineers |
| 3 | USEPA | U.S. Environmental Protection Agency |
| 4 | USFWS | U.S. Fish and Wildlife Service |
| 5 | USGS | U.S. Geological Survey |
| 6 | UWMP | urban water management plan |

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Appendices

1 Appendix A. Council Policies and 2 Procedures

3 Formal policies and procedures are considered and adopted by the Council and are included in this
4 Interim Plan for reference only as they provide a basis for Council operations. These policies and
5 procedures could continue after the Delta Plan is adopted, although they may be amended by Council
6 action.

7 The following policies and procedures addressed in this appendix:

- 8 • A.1. Procedures for Delta Stewardship Council Meetings (Adopted)
- 9 • A.2. Procedures for Bringing Actions before the Council
- 10 • A.3. Delta Stewardship Council Administrative Procedures for Appeals and Reviews

A.1. Procedures for Delta Stewardship Council Meetings (Adopted by the Council on April 22, 2010)

1. **Purpose:** These procedures are adopted for the purpose of providing for the orderly and effective conduct of meetings of the Delta Stewardship Council (Council).
2. **Open Meetings:** All meetings of the Council will be conducted in accordance with the Bagley-Keene Open Meeting Act (Government Code Sec. 11120 et seq.). Meetings of the Council will be open to the public, except for such closed sessions as authorized by that act (e.g., personnel decisions, pending litigation).
3. Meetings will be webcast (and then archived on the Internet) or otherwise recorded electronically, subject to available funding and the proper functioning of equipment.
4. **Time and Place of Regular Meetings:** Unless otherwise specified, the Council will meet regularly, on the fourth Thursday and Friday of every month, at the Secretary of State's Office Auditorium at 1500 11th Street, Sacramento, California. At least two regular meetings will take place at an alternate location within the boundaries of the legal Delta or Suisun Marsh.
5. **Special and Emergency Meetings:** Under certain limited circumstances necessitating immediate action, as specified in the Bagley-Keene Act, the Council may convene a special or an emergency meeting in accordance with that act.
6. **Hearings:** The Council may hold hearings in all parts of the state necessary to carry out the powers vested in it, and for these purposes, has certain powers conferred upon the heads of state departments specified in law (Government Code Sec. 11180 et seq.). Any hearing by the Council may be conducted by any member, or other designee, upon authorization of the Council, and he or she will have all powers duly granted to the Council under law, provided that any final action of the Council will be taken by a majority vote of the membership of the Council at a regular meeting.
7. **Teleconference Meetings:** The Council may conduct audio or audio/visual teleconference meetings in accordance with the Bagley-Keene Act. When a teleconference meeting is held, each site that includes a member of the Council must be listed on the agenda and accessible to members of the public; all proceedings must be audible; and votes must be taken by roll call. The Council may also provide members of the public with additional locations from which the public may observe or address the Council by electronic means.
8. **Quorum/Voting:** A majority of the voting members of the Council will constitute a quorum for the transaction of the business of the Council. A majority vote of the voting membership is required to take action with respect to any matter. The vote of each member will be individually recorded. The board will not transact the business of the Council if a quorum is not present at the time a vote is taken; however, board members constituting less than a quorum may meet as a committee of the board and submit their recommendations to the board when a quorum is present.
9. **Election and Duties of Chair/Vice Chair:** Council members will elect a Chair and a Vice Chair from among the membership, each of whom will serve for not more than four years in that

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capacity. The Chair will preside over all meetings of the Council, maintain orderly procedure in accordance with these procedures and applicable law and decide questions of procedure subject to appeal to the full membership. The Chair may vote on all matters before the Council, may participate in discussions relating to any matter, and may second any motion without relinquishing the chair. In the Chair's absence or inability to act, the Vice Chair shall preside.

10. **Attendance/Duties of Executive Officer, Chief Counsel, and Assistant to Council:** The Executive Officer, or an appropriate designee, will attend all meetings of the Council, and be prepared to advise the Council on all matters coming before it and for implementing all actions taken by the Council. The Chief Counsel, or an appropriate designee, will attend all meetings of the Council, and will act as parliamentarian and be prepared to advise the Council on questions of law. The Assistant to the Council, or an appropriate designee, will attend all meetings of the Council, facilitate orderly public comment through the use of speaker request forms, and maintain a full and complete record of all meetings and the vote of each member as required by law and these procedures.
11. **Required Notice/Agendas:** The Assistant to the Council will ensure that notices of regular meetings, along with agendas that sufficiently describe the items of business to be transacted or discussed, are posted on the Internet and mailed, as appropriate, at least 10 days in advance of the meeting. The Executive Officer will prepare agendas for the Council, working closely with the Chair and other members, and with the Chief Counsel, regarding closed session items. Action items of a routine nature may be bundled together as a single consent calendar item; provided that any member may remove any item from the consent calendar, to be discussed and voted upon separately at an appropriate place in the agenda determined by the Chair, and the Council will then approve the remainder of the consent calendar. At the discretion of the Council, all items appearing on the agenda, whether or not expressly listed for action, may be deliberated upon and may be subject to action by the Council. A public comment period will be included at the end of each agenda, during which time, members of the public may address the Council—subject to reasonable time limits set by the Chair-- on matters within its jurisdiction, but not listed for action or discussion on that agenda. Items may not be added to a posted agenda, except in limited circumstances necessitating immediate action, as specified in the Bagley-Keene Act.
12. **General Format for Agenda Item Discussion at Meetings:** (A) The Council will discuss agenda items in sequential order; provided that the Chair may take items out of sequential order to accommodate the public or expedite the conduct of the meeting; (B) The Chair will clearly announce the agenda item number and state what the subject is; (C) the Chair will then invite the appropriate persons to report on the item, including any recommendations they may have; (D) the Chair will ask members if they have any technical or other clarifying questions regarding the item; (E) the Chair will invite public comments on the item, and, if numerous members of the public wish to speak (as indicated by the number of speaker request forms submitted), may limit the time of each public speaker; (F) the Chair will invite a motion for the members, and announce the name of the member who makes the motion; (G) the Chair will determine if any member wishes to second the motion, and will announce the name of the member who seconds the motion. The Chair, in his or her discretion, may decide to proceed with consideration and a vote on the motion even when there is no second; (H) If the motion is made and seconded, the Chair will make sure that all members understand the motion; (I) the Chair will then invite

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1 discussion of the motion by the members; (J) the Chair will then take a vote, announce the
2 results, and state what action (if any) the Council has taken.

3 **13. Overruling the Chair:** A decision of the Chair with respect to the interpretation or applicability of
4 these procedures may be overruled by a majority vote of the membership of the Council.

5 **14. Robert's Rules:** If these procedures or the law do not clearly address a specific procedural
6 situation, the Chair may refer to the current edition of Robert's Rules of Order for guidance.

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1 **A.2. Procedures for Bringing Actions before the** 2 **Council**

3 A variety of action items will be brought before the Council which relate to its statutory responsibilities
4 under the Sacramento-San Joaquin Delta Reform Act of 2009 and other provisions of SBX7 1 of 2009.

5 The Council will establish procedures for orderly consideration of such items and procedures to bring
6 items before the Council, including:

7 a. The Council agenda will be developed in this priority:

8 1. Legally required items

9 2. Items scheduled through the Council work plan

10 3. Recommendation by the Council chair, approved by a majority of Council members voting

11 4. Recommendations of Council members, approved by a majority of Council members voting

12 b. To ensure informed decision-making, the Council strongly encourages agencies to provide in a timely
13 manner the following types of information in connection with any plan, policy or project (e.g., the
14 economic sustainability plan prepared by the Delta Protection Commission under Public Resources Code
15 section 29759 or local flood plans, transportation plans, or energy plans (Wat. Code § 85307), to be
16 reviewed or evaluated by the Council:

17 1. Identification of the authority under which the plan, policy or program is proposed

18 2. Information on financing proposed activities, including identifying sources of funding, public
19 and private

20 3. Evidence of the status of all actions required by other governmental agencies for the proposed
21 plan, policy or program to be implemented

22 4. Information needed to assess the proposed action's impact on all eight policy objectives
23 enumerated in Water Code section 85020, minimally requiring information sufficient to assess
24 impact on the performance measures of those eight policy objectives

25 c. For Council action on a project, the following information is recommended, to be provided in a form
26 determined by the Council:

27 1. Identification of the project proponent and all parties with an economic interest in the project

28 2. Adequate locality, site, and project descriptions

29 3. A time schedule through full use of the proposed project

30 4. Evidence of completion of reviews and actions by other governmental agencies, including but
31 not limited to environmental documentation, species protection, and land use permits

32 5. Information on financing of the proposed project, including any public funding, and adequate
33 demonstration of the status of proposed funding. The financing plan should include ongoing
34 operations and maintenance and information on planned financial coverage of contingencies for
35 failure

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- 1 6. Information needed to assess the proposed action's impact on all eight policy objectives
2 enumerated in Water Code section 85020, including information sufficient to assess impact on
3 the performance measures of those eight policy objectives
- 4 7. Any scientific and /or engineering assessments of the proposed action
- 5 8. For Council action approving allocation of Proposition 1E funds under Water Code 83002(a)(1),
6 or similar actions,
 - 7 (a) Project applicants must agree to indemnify the State of California for general liability costs
8 related to the project.
 - 9 (b) If there are 'real parties of interest' who benefit substantially from the project, the Council
10 request that the benefitting parties be identified in the DWR report, and a clear statement made
11 of what portion of the local share is being financed by that benefitted party.
 - 12 (c) The Department require other measures of project applicants which may reduce potential
13 future liability, such as an annual notification to landowners of flood protection status.

1 **A.3. Delta Stewardship Council Administrative** 2 **Procedures for Appeals and Reviews**

3 This section contains three parts:

- 4 • Part I. Administrative Procedures Governing Appeals
5 • Part II. Statutory Provisions Requiring other Consistency Reviews
6 • Part III. Other Forms of Review or Evaluation by the Council

7

8 **Part I. Administrative Procedures Governing Appeals**

9 **Introduction**

10 1. Purpose. These administrative procedures govern how the Delta Stewardship Council considers
11 appeals with regard to:

12 a) Adequacy of certifications of consistency with the Delta Plan submitted to the council by a
13 state or local public agency pursuant to Water Code sections 85225.10 and 85225.30; and

14 b) Determinations by the Department of Fish and Game that the Bay Delta Conservation Plan
15 has met the requirements of Water Code section 85320.

16 NOTE: Authority cited: Water Code sections 85001, 85020(h), 85022, 85057.5, 85200, 85210,
17 85212, 85225, 85225.5, 85225.10, 85225.15, 85225.20, 85225.25, 85225.30, 85300, 85320(e).

18 **Review of certifications of consistency with Delta Plan**

19 2. Any state or local public agency proposing to undertake a covered action, as defined in Water
20 Code section 85057.5 is encouraged to consult with the council at the earliest possible opportunity,
21 preferably no later than 30 days before submitting its certification to the council pursuant to Water
22 Code section 85225, to ensure that the project will be consistent with the Delta Plan. The council's staff
23 will meet with the agency's staff to review the consistency of the proposed action and to make
24 recommendations, as appropriate. During this early consultation, the agency's staff may also seek
25 clarification on whether the proposed project is a "covered action." NOTE: Authority cited: Water Code
26 sections 85212, 85225, 85225.5, 85225.30.

27 3. At least 10 days prior to its submission of a certification to the council, a state or local public
28 agency that is not subject to open meeting laws (that is, the Bagley-Keene Open Meeting Act [Gov. Code
29 sec.11120 et seq.] or the Brown Act [Gov. Code sec.54950 et seq.]) with regard to its certification, shall
30 post, for public review and comment, its draft certification conspicuously on its website and in its office,
31 mail it to all persons requesting notice, and include any public comments received in the record
32 submitted to the council in the case of an appeal. A state or local public agency that is subject to open
33 meeting laws with regard to its certification is encouraged to take those actions.

34 NOTE: Authority cited: Water Code sections 85225, 85225.30.

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1 4. a) Any certification of consistency filed by a state or local agency pursuant to Water Code
2 section 85225 shall set forth detailed findings that the covered action is consistent with the Delta Plan.
3 The council shall prepare a checklist that agencies may use to assist them in preparing the certification
4 and making the required findings.

5 b) A state or local agency shall submit to the council, no later than 10 days after receiving notice
6 of an appeal pursuant to Paragraph 8, the record that was before the state or local agency at the time it
7 made its certification, including a table of contents of documents contained therein and a brief
8 chronology of events and actions relevant to the covered action. The record shall be certified by the
9 state or local agency as being “full and complete.” Given the tight, statutory deadlines for hearing and
10 deciding appeals, a state or local agency is nevertheless strongly encouraged to submit the record at the
11 time it files its certification of consistency, to ensure the opportunity for thorough review by the council
12 in the event of an appeal.

13 c) The failure by a state or local agency to submit the record to the council on a timely basis as
14 required by subparagraph (B), shall be grounds for the council to affirm the appeal on the basis that
15 there was not substantial evidence presented to support the certification of consistency.

16 d) Any filings required by this Paragraph (4) shall be submitted in electronic form to facilitate
17 availability and public access, and shall be public records.

18 NOTE: Authority cited: Water Code sections 85225, 85225.30.

19 5. Any person, including any member of the council or its executive officer, who claims that a
20 proposed covered action is inconsistent with the Delta Plan and, as a result of that inconsistency, that
21 action will have a significant adverse impact on the achievement of one or both of the goals of the Act or
22 implementation of government sponsored flood control programs to reduce risks to people and
23 property in the Delta, may file an appeal no later than 30 calendar days after the filing of the
24 certification of consistency with the council.

25 NOTE: Authority cited: Water Code sections 85225.10 (a), 85225.15, 85225.30.

26 6. The appeal shall clearly and specifically set forth the basis for the claim that the covered action
27 is inconsistent with the Delta Plan. The appeal shall be in writing and set forth the following information:

- 28 a) Appellant’s name and address;
29 b) The name and address of the party, if any, whose proposal is the subject of the appeal;
30 c) A description of the covered action that is the subject of the state or local public agency
31 certification;
32 d) The identity of the state or local government body whose certification is being appealed;
33 e) The specific grounds for appeal; and
34 f) A detailed statement of facts on which the appeal is based.

35 The appeal shall be filed in electronic form.

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1 NOTE: Authority cited: Water Code sections 85225.10 (b), 85225.30.

2 7. The appeal shall be considered “filed” with the council when the appellant’s appeal is received,
3 determined by staff to contain all of the information listed in Paragraph 6, and a hard-copy is printed
4 and stamped “Filed” by the council staff with the date of filing indicated.

5 NOTE: Authority cited: Water Code sections 85225.10, 85225.20, 85225.30.

6 8. Within five working days of filing an appeal, the executive officer shall:

7 a) Post a notice and brief description of the appeal and its effective date in a conspicuous
8 location in the council’s office and on its website;

9 b) Mail to the affected state or local public agency and any third party whose proposal is the
10 subject of the certification a copy of the notice and a brief description, with a copy of the appeal
11 documents filed with the council;

12 c) Mail copies of the appeal to each member of the council; and

13 d) Mail notice to the appellant that the appeal has been filed and stating the effective date of
14 filing.

15 NOTE: Authority cited: Water Code sections 85225.30.

16 9. The council or its executive officer may request from the appellant further information
17 necessary to clarify, amplify, correct, or otherwise supplement the information submitted with the
18 appeal, within a reasonable period. The council or by delegation its executive officer may dismiss the
19 appeal for failure of the appellant to provide information requested within the period provided, if the
20 information requested is in the possession of or under the control of the appellant.

21 10. The council or its executive officer may supplement the record submitted by the state or local
22 agency if the council or its executive officer determines that additional information was part of the
23 record before the agency, but was not included in the agency’s submission to the council.

24 NOTE: Authority cited: Water Code sections 85225.10, 85225.20, 85225.25, 85225.30.

25 11. The appellant, the state or local agency, or any other person may testify before the council
26 regarding an appeal. Presentations may be oral or in writing, shall address only whether the record
27 supports the certification of consistency, and shall be as brief as possible. Written submissions must be
28 provided to the council at least 10 days prior to the hearing. The council’s presiding officer may establish
29 reasonable time limits for presentations.

30 NOTE: Authority cited: Water Code sections 85225.10, 85225.20, 85225.25, 85225.30.

31 12. All written submissions to the council may be in electronic form.

32 NOTE: Authority cited: Water Code section 85225.30.

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1 13. The council shall hear all appeals of certifications of consistency filed pursuant to Water Code
2 section 85225 within 60 days of filing unless:

3 a) The parties agree to a reasonable extension approved by the executive officer, taking into
4 account the circumstances of the matter subject to appeal and the Council's hearing schedule and
5 associated workload, or

6 b) The council, or by delegation its executive officer, determines that the issue raised on appeal
7 is not within the council's jurisdiction or does not raise an appealable issue.

8 NOTE: Authority cited: Water Code sections 85225, 85225.20, 85225.30.

9 14. The council shall make its decision on the appeal within 60 days of hearing the appeal, and shall
10 make specific written findings defining the covered action under review and either denying the appeal
11 or remanding the matter to the state or local public agency for reconsideration of the covered action
12 based on the finding that the certification of consistency is not supported by substantial evidence in the
13 record before the state or local public agency that filed the certification.

14 NOTE: Authority cited: Water Code sections 85225.20, 85225.25, 85225.30.

15 15. No covered action which is the subject of an appeal shall be implemented unless one of the
16 following conditions has been met:

17 a) The council has denied the appeal;

18 b) The public agency has pursuant to Water Code section 85225.5 decided to proceed with the
19 action as proposed or modified and has filed with the council a revised certification of consistency
20 addressing each of the findings made by the council, 30 days has elapsed and no person has appealed
21 the revised certification; or

22 c) The council or its executive officer has dismissed the appeal for one or both of the following
23 reasons:

24 1. The appellant has failed to provide information in her possession or under her control
25 within the time requested or

26 2. The issue raised is not within the council's jurisdiction or fails to raise an appealable
27 issue.

28 NOTE: Authority cited: Water Code sections 85225.5, 85225.25, 85225.30.

29 **Review of Bay Delta Conservation Plan**

30 16. If the Department of Fish and Game (department) determines that the Bay Delta Conservation
31 Plan (BDCP) referred to in Water Code section 85053 meets the requirements of Water Code section
32 85320, it shall file the BDCP and its determination with the council.

33 NOTE: Authority cited: Water Code sections 85053, 85225.30, 85320.

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1 17. Upon receipt of the department's determination, the executive officer of the council shall:
2 a) Post a notice and brief description of the BDCP, the department's determination, the date of
3 filing and the right of any person to appeal that determination on its website and in a conspicuous
4 location in the council's office;

5 b) Mail a notice and brief description of the BDCP, the department's determination and the
6 right of appeal to any person requesting notice; and

7 c) Mail copies of the determination to each member of the council.

8 NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

9 18. Any person, including any member of the council or its executive officer, may appeal to the
10 council the determination of the department that the BDCP meets the requirements of Water Code
11 section 85320.

12 NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

13 19. Any appeal to the council made pursuant to Paragraph 19 shall be made within 30 days of the
14 filing with the council of the department's determination that the BDCP meets all the requirements of
15 Water Code section 85320. The appeal shall be in writing and filed in electronic form. It shall clearly set
16 forth the specific grounds for the appeal and the specific facts upon which it is based. These shall include
17 a list of each specific requirement of Water Code section 85320 that the BDCP allegedly fails to meet.
18 The appeal shall be considered filed with the council when the appellant's appeal is received,
19 determined by staff to contain all the information required in this paragraph, and a hard-copy is printed
20 and stamped "Filed" by the council staff with the date of filing indicated.

21 NOTE: Authority cited: Water Code sections 85225.30, 85320.

22 20. Within five working days of the filing of an appeal under these procedures, the executive
23 director shall:

24 a) Post a notice and brief description of the appeal on its website and in a conspicuous location
25 in the council's office;
26 b) Mail a notice and brief description of the appeal to any person requesting copies of such
27 appeals; and
28 c) Mail copies of the appeal and a brief description of the appeal to each member of the
29 council.

30 NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

31 21. The council or its executive officer may request from the appellant or the department additional
32 information necessary to clarify, amplify, correct, or supplement the information submitted with the
33 appeal within a reasonable period.

34 NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

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1 22. Any appeal made under this section may be dismissed if the council or its executive officer
2 determines that it does not raise an appealable issue or if the appellant has failed to provide requested
3 information to support her charge within a reasonable time, if that information is in the possession of or
4 under the control of the appellant.

5 NOTE: Authority cited: Water Code sections 85225.30, 85320 (e).

6 23. The council's decision shall be de novo based on its independent judgment in reviewing the
7 applicable law and facts.

8 NOTE: Authority cited: Water Code section 85225.30, 85320(d).

9 24. If the council decides that the BDCP does not meet all of the requirements of section 85320, it
10 shall post its decision on its website and mail copies to the department and all parties requesting notice.

11 NOTE: Authority cited: Water Code sections 85225.30, 85320(d).

12 25. The department may revise its determination to meet the issues raised by the council, or may
13 respond to the council's findings in detail, setting forth reasons why it has concluded that the plan
14 meets all of the requirements of section 85320. Unless the council decides that the BDCP, as submitted
15 or revised, meets all of those requirements, the BDCP shall not be incorporated within the Delta Plan
16 and the public benefits associated with the BDCP shall not be eligible for state funding.

17 NOTE: Authority cited: Water Code sections 85225.30, 85320 (a), (b), (e).

18 **Ex Parte Contact Restrictions Applicable to All Appeals**

19 26. Hearings on appeals are subject to the ex parte communication restrictions of California
20 Administrative Procedures Act (Gov. Code § 11430.10 et seq.). Under that Act, an ex parte
21 communication is a "communication, direct or indirect, regarding any issue in the proceeding, to the
22 [council or council member] from an employee or representative of an agency that is a party or from an
23 interested person outside the agency, without notice and opportunity for all parties to participate in the
24 communication." (Gov. Code § 11430.10.) The restrictions apply from the date that the appeal is filed to
25 the date that the council reaches a final decision on the appeal.

26 NOTE: Authority cited: Government Code sections 11430.10, 11430.80, Water Code section
27 85225.30.

28 27. To ensure compliance with these provisions, members should avoid ex parte communications
29 while an appeal is pending. If they nevertheless receive one, such as by an individual sending a letter to
30 a member concerning a pending matter, the member should notify the council's legal adviser or
31 executive officer so that appropriate measures can be taken.

32 NOTE: Authority cited: Government Code sections 11430.10, 11430.80, Water Code section
33 85225.30

34 28. At the first appropriate meeting after an appeal is anticipated or filed, the council's legal adviser
35 will remind the council of this restriction and answer questions about its scope.

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1 NOTE: Authority cited: Government Code sections 11430.10, 11430.80, Water Code section
2 85225.30.

3 **Official Notice**

4 29. Notwithstanding any provision of these procedures to the contrary, the council may take official
5 notice in any hearing that it conducts, of any generally accepted technical or scientific matter within the
6 council's jurisdiction, and of any fact that may be judicially noticed by the courts of this State.

7 NOTE: Authority cited: Government Code section 11515, Water Code section 85225.30.

8 **Filings and Mailings**

9 30. All filings and mailings required by sections 1-29 of these procedures may be made
10 electronically. NOTE: Authority cited: Water Code section 85225.30.

11

12

1 **Part II. Statutory Provisions Requiring Other Consistency 2 Reviews (After Adoption of the Delta Plan)**

3 In several other sections of SB X7 1, the council is directed to review for consistency with the Delta Plan,
4 various plans of specified public agencies. This Part is directed at those reviews, which fall outside the
5 scope of the procedures covered previously in Part I.

6 1. Delta Protection Commission's Economic Sustainability Plan.

7 Public Resources Code section 29759 requires the Delta Protection Commission (DPC), by July 1, 2011,
8 to adopt an economic sustainability plan. That plan must include information and recommendations
9 that inform the council's policies regarding the socioeconomic sustainability of the Delta's region.

10 Public Resources Code section 29761.5(b) requires the DPC to transmit copies of the plan to the council
11 within 60 days of adoption. The council is required, within 180 days of the adoption of the plan, to
12 review the plan for consistency with the Delta Plan.

13 2. Local and Regional Planning Documents.

14 Water Code section 85057.5(b)(3), excepts from the definition of "covered action", regional
15 transportation plans prepared pursuant to Government Code section 65080.

16 Paragraph (4) of that same section, excepts from the definition of "covered action", plans, programs,
17 projects or activities within the Secondary Zone of the Delta that the applicable metropolitan planning
18 organization under Government Code section 65080 has determined is consistent with either a
19 sustainable communities strategy or an alternative planning strategy that would achieve specified
20 greenhouse gas emission reduction targets as determined by the Air Resources Board.

21 Because they are not "covered actions", these types of local and regional planning documents are not
22 subject to the statutory provisions governing consistency of state and local public agency actions (Wat.
23 Code § 85225 et seq.), or the council's Administrative Procedures Governing Appeals (Part I, above),
24 with one exception noted in paragraph (d), below.

25 However, Water Code section 85212 provides a separate requirement and process for consistency
26 review by the council of these types of local and regional planning documents.

27 In particular:

28 (a) The council is required to review and provide timely advice to local and regional planning agencies
29 regarding the consistency of local and regional planning documents, including sustainable communities
30 strategies and alternative planning strategies prepared pursuant to Government Code section 65080,
31 with the Delta Plan.

32 (b) The council's input must include, but not be limited to, reviewing the consistency of local and regional
33 planning documents with the ecosystem restoration needs of the Delta and reviewing whether the lands
34 set aside for natural resources protection are sufficient to meet the Delta's ecosystem needs.

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- 1 1 (c) A metropolitan planning organization preparing a regional transportation plan that includes land
2 within the primary or secondary zones of the Delta must consult with the council early in the planning
3 process regarding the issues and policy choices relating to the council's advice.
- 4 4 (d) No later than 60 days prior to the adoption of a final regional transportation plan, the metropolitan
5 planning organization must provide the council with a draft sustainable communities strategy and an
6 alternative planning strategy, if any. Concurrently, the metropolitan planning organization must provide
7 notice of its submission to the council in the same manner in which agencies file a certificate of
8 consistency with regard to covered actions.
- 9 9 (e) If the council concludes that the draft strategies are inconsistent with the Delta Plan, the council
10 must provide written notice of the claimed inconsistency to the metropolitan planning organization no
11 later than 30 days prior to the adoption of the final regional transportation plan.
- 12 12 (f) If the council provides timely notice of a claimed inconsistency, the metropolitan planning
13 organization's adoption of the final regional transportation plan must include a detailed response to the
14 council's notice.

15
16

1 **Part III. Administrative Procedures Governing Other Forms of 2 Review or Evaluation**

- 3 1. Interested parties, including federal, state and local public agencies, are encouraged to confer with
4 the council or its executive officer over the scope and potential impacts of the interim plan developed
5 under Water Code section 85084. Interested parties will be provided an opportunity to comment and
6 provide input on the interim plan as it is developed.
- 7 2. Similarly, prior to adoption of the Delta Plan, project proponents are encouraged to consult with the
8 council or its executive officer early in the planning stages of projects that may constitute "covered
9 actions" under Water Code section 85057.5 once the Delta Plan is adopted. Subject to available
10 resources, the council may review and comment on planning documents and environmental review
11 documents regarding potential "covered actions".
- 12 3. Subject to available resources, the executive officer or his designee may meet with interested parties,
13 upon their request, to help mediate relevant disputes, including disputes, once the Delta Plan is
14 adopted, over whether a project constitutes a "covered action" under Water Code section 85057.5. The
15 intent of this mediation will be to provide an objective and informal forum for dispute resolution that
16 will serve as a more efficient alternative to costly and time-consuming litigation.
- 17 4. Interested parties, including federal, state and local agencies, are encouraged to confer and
18 coordinate with the council or its executive officer with regard to agency plans, studies, strategies, and
19 recommendations required, or otherwise suggested, to be considered by the Council for incorporation
20 into the Delta Plan.

21

1 Appendix B. Early Action Review 2 Processes and Plan or Project Review 3 Application

4 B.1 Early Action Review Processes

- 5 Possible early actions should be considered under the framework of the adopted Interim Plan.
- 6 Priority for consideration should be given to early actions identified in SBX7 1 Part 2. "Early Actions" in
7 Water Code sections 85080 through 85087 could be considered in September 2010.
- 8 Other possible early actions, including those recommended through public comments, should be
9 screened against the legislative history criteria of urgency stated above. Those satisfying this screen
10 could be considered in October and November 2010. Proposals received after November 1, 2010, may
11 not be considered as "early actions."
- 12 The Council should establish a two-member "early actions" committee to review identified possible
13 early actions and make recommendations to the full Council (under Wat. Code § 85210(k)).
- 14 The Council committee should review possible early actions as identified and on the schedule in its work
15 plan.
- 16 The early actions committee should consider possible early actions in public meetings, and should
17 develop an agenda with designated time limits to ensure completing the reviews in the time allotted.
- 18 To promote efficient review o f potential early actions, project proponents are strongly encouraged to
19 complete the "Plan or project review application" (adopted by the council August 2010) and submit it to
20 the council staff no less than thirty days (30) days before the committee meeting at which the item is
21 scheduled, except that potential early actions scheduled for consideration in September 2010 may
22 submit these materials no less twenty (20) days before the committee meeting at which the item is
23 scheduled . If an application is deemed incomplete, the item will be removed from the agenda and may
24 be rescheduled at the discretion of the council committee.
- 25 To promote efficient review of potential early actions, project proponents are strongly encouraged to
26 submit materials electronically and also to deliver ten (10) hard copies to the Council offices.
27 Applications and related materials will be posted to the Council website.
- 28 Public comments on the application will be invited, with a deadline of ten (10) days before the
29 scheduled committee hearing, and those comments will be posted to the Council website.
- 30 Each application would be reviewed by Council staff or consultants, and a brief cover memo prepared
31 identifying issues of particular relevance.
- 32 Each application should be reviewed by the Delta Science Program staff to identify the adequacy of
33 scientific information available to support a committee recommendation and Council action using the
34 standard of "best available science" required in statute and specified in the Interim Plan. If they judge
35 the available scientific information inadequate, they may make a recommendation for any needed

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- 1 additional scientific information. The committee would consider the Delta Science Program staff
2 comments in making its recommendation to the full Council.
- 3 The committee could make one of the following recommendations on possible early actions, conveying
4 its recommendation to the full Council in a brief report:
- 5 **No action at this time** (because _____)
- 6 **Additional information is needed** (and the item is rescheduled for _____, possibly not as an “early
7 action”)
- 8 **Recommend the Council provide a positive recommendation (citing policy objectives advanced
9 _____)**
- 10 **Recommend the Council provide a negative recommendation (citing policy objectives harmed or in
11 conflict _____)**
- 12 **Recommend modifications to proposal as follows (_____)**
- 13 **Refer for consideration under the Delta Plan (_____)**
- 14

B.2. Application Form for Consideration of a Plan or Project

The Delta Reform Act creates the Delta Stewardship Council (Council) as an independent agency of the state (Wat. Code §85200). SBX7 1 (effective February 3, 2010) gives the Council several responsibilities, many linked to a comprehensive “Delta Plan,” which the Council is charged to develop, adopt, and commence implementation by January 1, 2012. The Council is also charged with developing an Interim Plan “...that includes recommendations for early actions, projects, and programs” (Wat. Code § 85084). The Council has set August 27, 2010, as the date for adoption of the Interim Plan. The Council uses the framework established in the Interim Plan to make recommendations based on its responsibilities under SBX7 1. After the Delta Plan is adopted, the Council decisions will become determinative.

1. Applicant Information

Request:	Consideration as an early action: _____
Consultation re plan:	_____
Consultation re: possible covered action:	_____
Other (please specify):	_____
Name:	_____
Legal status (city, special district, firm, individual, etc.):	_____
Address of applicant:	_____
Contact information: Name of responsible individual:	_____
Role (officer, attorney, etc.):	_____
Address:	_____
Email:	_____
Telephone:	_____
Plan or project purpose narrative, including legal authority. If an action is “urgent,” provide the rationale for urgency.	

1 _____
2 _____

3 **Plan or project physical location and description (include geo-referencing latitude and longitude for
4 projects):**

5 _____
6 _____

7 _____

8 **2. Plan or Project Review by Public Agencies**

9 **Local Government Discretionary Approval(s):**

10 Yes _____ No _____ If yes, describe: _____

11 **State Lands Commission:**

12 Yes _____ No _____

13 **Regional Water Quality Control Board:**

14 Yes _____ No _____ Regional Board Number: _____

15 **California Dept. of Toxic Substances Control:**

16 Yes _____ No _____

17 **California Department of Fish and Game Streambed Alteration Permit:**

18 Yes _____ No _____

19 **DF&G Take Authorization:**

20 Yes _____ No _____

21 **Other DF&G Permit:**

22 Yes _____ No _____

23 **U.S. Army Corps of Engineers:**

24 Yes _____ No _____ Public Notice Number: _____

25 **U.S. Fish and Wildlife Service: Take Authorization**

26 Yes _____ No _____

27 **Biological Opinion:**

28 Yes _____ No _____

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1 **NOAA Fisheries Service: Take Authorization**

2 Yes _____ No _____

3 **Biological Opinion**

4 Yes _____ No _____

5 **U.S. Coast Guard:**

6 Yes _____ No _____

7 **Federal Funding:**

8 Yes _____ No _____

9 **Describe any history of consideration by any other governmental agency and provide documentation of any actions taken.**

10 _____
11 _____
12 _____

13

14 **3. Environmental Impact Documentation (must be completed by all applicants)**

15 **a.** Is the project statutorily or categorically exempt from the need to prepare any environmental documentation?

16 Yes _____ No _____

17 If "Yes," please attach a statement that identifies and supports this statutory or categorical exemption.

18 **b.** Has a government agency other than the Council, serving as the lead agency, adopted a negative declaration or certified an environmental impact report or environmental impact statement on the project?

19 Yes _____ No _____

20 If "Yes," attach a copy of the document. If the environmental impact report or statement is longer than ten pages, also provide a summary of up to ten pages. If "No," provide sufficient information to allow the Council to make the necessary findings regarding all applicable policies. The certified document must be submitted prior to action on the application.

21 **4. Assessment against Delta Reform Act Policy Objectives**

22 Assess the proposed plan or project against the eight policy objectives listed below which "the legislature declares are inherent in the coequal goals for management of the Delta" (WC Section 85020).

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1 Provide a brief summary for the rationale for each assessment and reference to any supporting
2 documentation (include URL links as appropriate).

3 **(a) Manage the Delta's water and environmental resources and the water resources of the state
4 over the long term.**

5 Positive _____ Negative _____ Neutral _____ Unknown _____

6 Rationale, magnitude of effect (if positive or negative) and documentation:
7 _____
8 _____

9 **(b) Protect and enhance the unique cultural, recreational, and agricultural values of the California
10 Delta as an evolving place.**

11 Positive _____ Negative _____ Neutral _____ Unknown _____

12 Rationale, magnitude of effect (if positive or negative) and documentation:
13 _____
14 _____

15 **(c) Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy
16 estuary and wetland ecosystem.**

17 Positive _____ Negative _____ Neutral _____ Unknown _____

18 Rationale, magnitude of effect (if positive or negative) and documentation:
19 _____
20 _____

21 **(d) Promote statewide water conservation, water use efficiency, and sustainable water use.**

22 Positive _____ Negative _____ Neutral _____ Unknown _____

23 Rationale, magnitude of effect (if positive or negative) and documentation:
24 _____
25 _____

26 **(e) Improve water quality to protect human health and the environment consistent with
27 achieving water quality objectives in the Delta.**

28 Positive _____ Negative _____ Neutral _____ Unknown _____

29 Rationale, magnitude of effect (if positive or negative) and documentation:
30 _____
31 _____

32 **(f) Improve the water conveyance system and expand statewide water storage.**

33 Positive _____ Negative _____ Neutral _____ Unknown _____

34 Rationale, magnitude of effect (if positive or negative) and documentation:
35 _____
36 _____

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1 (g) Reduce risks to people, property, and state interests in the Delta by effective emergency
2 preparedness, appropriate land uses, and investments in flood protection.

3 Positive _____ Negative _____ Neutral _____ Unknown _____

4 Rationale, magnitude of effect (if positive or negative) and documentation:
5 _____
6 _____

7 (h) Establish a new governance structure with the authority, responsibility, accountability,
8 scientific support, and adequate and secure funding to achieve these objectives.

9 Positive _____ Negative _____ Neutral _____ Unknown _____

10 Rationale, magnitude of effect (if positive or negative) and documentation:
11 _____
12 _____

14 5. Assessment of Administration and Implementation 15 Processes

16 **Cost of Project/Plan:** Please provide your best estimate of the total cost of the project or plan you are
17 proposing. If this is a Plan, please provide an estimate of the annual operational or enforcement costs
18 projected for the activity. Please list all sources used for developing the cost estimates

19 _____
20 _____

21 **Financing (provide information on public and private sources of funding, including funds on hand or
22 legally pledged or obligated and the sources of those funds):**

23 _____
24 _____

25 **Identify any public agencies (federal, state and local) whose actions or decisions are essential for the
26 proposed action to succeed. Provide evidence of their approval and support of the proposed action:**

27 _____
28 _____

29 **If real property must be acquired or use altered for the success of the proposed action, identify the
30 owners of that property and information on how ownership or use change will occur:**

31 _____
32 _____

33 **Provide a time line for the proposed plan or project, including major milestones through completion:**

34 _____
35 _____

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1 **Describe how success or failure of the plan or project will be determined, including measures**
2 **proposed, time frame and public agency responsible for judging success:**

3 _____
4 _____

5 **Describe the major benefits that can result from the proposed plan or project, including identification**
6 **of beneficiaries and any information on the magnitude and timing of benefits received:**

7 _____
8 _____

9 **If the proposed plan or project fails, what is done? What additional costs could be incurred and how**
10 **will they be financed? Identify any lasting effects or changed options for future policy making:**

11 _____
12 _____

13

14 6. Scientific justification (to address requirement for Council
15 use best available science, Water Code section 85302(g)):

16 **Describe any scientific justification for the proposed plan or project and provide all related**
17 **documents:**

18 _____
19 _____
20 _____
21 _____
22 _____

23

24 7. Applicant certifications and authorizations

25 I certify that all of the information submitted is complete and accurate to the best of my knowledge and
26 that all attached exhibits are full, complete and correct. I certify that I understand that omitted or
27 insufficient information can delay consideration of this application. I certify that this application is not
28 complete until accepted by the Council at a regularly scheduled meeting. I authorize the Council, its staff
29 or other authorized personnel to share this information publicly and authorize their collection of
30 additional information relevant to this application.

31 _____

32 Signature of applicant or applicant's representative Date

33 Printed name: _____ Title: _____

1 Appendix C: Council Approved Actions

2 Appendix C contains a record of Council-approved actions. It is intended to be the formal record of final
3 Council actions in satisfying SBX7 1. It will include, for example, any actions taken in regard to approval
4 of the economic sustainability plan of the Delta prepared by the Delta Protection Commission (Pub.
5 Resources Code § 29761.5(b)), actions regarding BDCP (§ 85320(e)), or adoption of the Interim Plan
6 (Wat. Code § 85084). The appendix will not include requests of other agencies or interim actions taken
7 unless they have some formal effect on actions (e.g., an interim ruling). This listing of Council approved
8 actions will continue after the Delta Plan is adopted.

9 **Table C-1:**
10 **Council Approved Actions**

Date of Council action	Action (“Project” is used consistent with Pub. Resources Code § 20165)	Responsible Agency	Relevant code sections	Relevant section of Interim Plan or Delta Plan
April 22, 2010	Council meeting procedures	Delta Stewardship Council	Water Code 85210(i) and Water Code 85201(a)	N/A
June 24, 2010	Appoint Independent Delta Science Board members	Delta Stewardship Council	Water Code 85080	N/A
June 25, 2010	Approved encumbering funds for design, planning and environmental review of 10 identified projects	Department of Water Resources and reclamation districts	Water Code 83002(a)(1)	N/A

11

12

1 Appendix D: Basic Legal Authorities

2 Water Code Section 85020 lists the state's policy objectives for the Delta. The Council has authority for
3 action under these objectives. This appendix summarizes those authorities.

4 **Section 85020(a): Manage the Delta's water and environmental 5 resources and the water resources of the state over the long 6 term.**

7 Section 85020 of the Delta Reform Act identifies policy objectives essential to achieving the coequal
8 goals. As previously indicated, the Council views the coequal goals defined in Public Resources Code
9 Section 29702(a) as a complete statement of state policy. This understanding of the definition of
10 "coequal goals" is repeated in Water Code Section 85054, and directly or indirectly implied in other
11 sections of the legislation. Thus, the objectives must be viewed through the prism of the coequal goals,
12 according to the plain language of the statute, "The policy of the State of California is to achieve the
13 following objectives that the Legislature declares are inherent in the coequal goals for management of
14 the Delta..."

15 The Delta Reform Act includes specific provisions that are addressed in more detail in the remaining
16 portions of this section related to ecosystem restoration under Section 85020(c) and water supply
17 reliability through water use efficiency and sustainable water use (§ 85020(d), improved Delta water
18 quality (§ 85020(e), improved water conveyance and statewide storage (§ 85020(f), and reduced risks to
19 people and property in the Delta (§ 85020(g)).

20 Section 85082 requires the Council to develop and implement a strategy to engage federal agencies,
21 including incorporating issues addressed in Sections II and III and IV.A of the December 22, 2009 Interim
22 Federal Action Plan for the California Bay-Delta that are relevant to policy objectives 85020(c)(d)(e) and
23 (f).

24 **Section 85020(b): Protect and enhance the unique cultural, 25 recreational, and agricultural values of the California Delta as 26 an evolving place**

27 Water Code Section 85020(b) identifies the need to "protect and enhance the unique cultural,
28 recreational, and agricultural values of the California Delta as an evolving place" as one of the key policy
29 objectives.

30 SBX7 1 also includes provisions related to the DPC, Delta land use, and economic development in the
31 Delta. The DPC is identified as:

32 Section 1. The appropriate agency to identify and provide recommendations to the Council on methods of
33 preserving the Delta as an evolving place (Pub. Resources Code § 29703.5(a))

- 34 • Eligible to be "the facilitating agency for the implementation of any joint habitat restoration plan or
35 enhancement programs located within the primary zone of the Delta...", including a National
36 Heritage Area designation in the Delta (§ 29756.5)

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- 1 • Required to submit to the Legislature “recommendations regarding the potential expansion of or a
2 change to the primary zone or the Delta” including considerations of Rio Vista, Isleton, Bethel Island,
3 Brannan-Andrus Island, the Cosumnes/Mokelumne floodway, and the San Joaquin/South Delta
4 lowlands (§ 29773.5) by July 1, 2010.

5 Water Code Section 85301 requires the DPC (referred to as “commission” in code section) and other
6 agencies to propose recommendations to the Council that the Council may include in the Delta Plan:

7 (a) The commission shall develop, for consideration and incorporation into the Delta
8 Plan by the council, a proposal to protect, enhance and sustain the unique cultural,
9 historical, recreational, agricultural, and economic values of the Delta as an evolving
10 place, in a manner consistent with the coequal goals.

11 (b)(1) The commission shall include in the proposal a plan to establish state and federal
12 designation of the Delta as a place of special significance, which may include application
13 for a federal designation of the Delta as a National Heritage Area.

14 (2) The commission shall include in the proposal a regional economic plan to support
15 increased investment in agriculture, recreation, tourism and other resilient land
16 uses in the Delta. The regional economic plan shall include detailed
17 recommendations for the administration of the Delta Investment Fund...

18 (c)(1) The Department of Parks and Recreation shall prepare a proposal...to expand
19 within the Delta the network of state recreation areas, combining existing and
20 newly designated areas.

21 (2) The Department of Food and Agriculture shall prepare a proposal...to establish
22 market incentives and infrastructure to protect and enhance the economic and
23 public values of Delta agriculture.

24 (d) The commission shall submit the proposal developed pursuant to subdivision (a) to
25 the council. The council shall consider the proposal and may include any portion of
26 the proposal in the Delta Plan if the council, in its discretion, determines that the
27 portion of the proposal is feasible and consistent with the objectives of the Delta
28 Plan and the purposes of this division.

29 Additionally, SBX7 1 also creates the Delta Investment Fund (Pub. Resources Code § 29778.5), allows the
30 Delta Conservancy to allocate funds for “economic sustainability in the Delta” (§ 32360(b)(3)), and
31 articulates a series of “fundamental goals for managing land use in the Delta” (Wat. Code § 85022(d)).

32 **Section 85020(c): Restore the Delta ecosystem, including its 33 fisheries and wildlife, as the heart of a healthy estuary and 34 wetland ecosystem**

35 The Delta Reform Act included Section 85020(c) to “restore the Delta ecosystem, including its fisheries
36 and wildlife, as the heart of a healthy estuary and wetland ecosystem” as an objective for management
37 of the Delta. In addition, the Delta Reform Act modified the Water Code to include the following
38 provisions related to sustainable water supplies.

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- 1 • Section 85302(c) details that the Delta Plan must address the Delta ecosystem, including “measures
2 that promote all of the following characteristics of a healthy Delta ecosystem:
- 3 – Viable populations of native resident and migratory species
4 – Functional corridors for migratory species
5 – Diverse and biologically appropriate habitats and ecosystem processes
6 – Reduced threats and stresses on the Delta ecosystem
7 – Conditions conducive to meeting or exceeding the goals in existing species recovery plans and
8 state and federal goals with respect to doubling salmon populations”
- 9 • Section 85302(e) identifies “subgoals and strategies for restoring a healthy ecosystem,” which are:
10 – “Restore large areas of interconnected habitats within the Delta and its watershed by 2100
11 – Establish migratory corridors for fish, birds, and other animals along selected Delta river
12 channels
13 – Promote self-sustaining, diverse populations of native and valued species by reducing the risk of
14 take and harm from invasive species
15 – Restore Delta flows and channels to support a healthy estuary and other ecosystems
16 – Improve water quality to meet drinking water, agriculture, and ecosystem long-term goals
17 – Restore habitat necessary to avoid a net loss of migratory bird habitat and, where feasible,
18 increase migratory bird habitat to promote viable populations of migratory birds”

19 The Delta Reform Act also contains the following provisions related to the management of the Delta
20 ecosystem:

- 21 • Sections 32360 through 32381 describe the responsibilities of the Delta Conservancy to support the
22 ecosystem
- 23 • Section 85086(c)(1) requires the SWRCB to “...develop new flow criteria for the Delta ecosystem
24 necessary to protect public trust resources” for the purpose of informing planning decisions for the
25 Delta Plan and the BCDP
- 26 • Section 85087 requires the SWRCB to “submit to the Legislature a prioritized schedule...to complete
27 instream flow studies for the Delta and for high priority rivers and streams in the Delta
28 watershed...by 2012, and for all major rivers and streams outside the Sacramento River watershed
29 by 2018” in consultation with the DFG
- 30 • Sections 85088 through 85089 describes conditions under which the point of diversion for the SWP
31 and CVP may be moved
- 32 • Section 85320 describes requirements under which the BCDP shall be incorporated into the Delta
33 Plan, including requirements for consideration of ecosystem conditions

1 **Section 85020(d): Promote statewide water conservation,
2 water use efficiency, and sustainable water use**

3 Several legislative acts have been adopted over the past 30 years to increase the amount of water
4 conservation. In 1985, the California Urban Water Management Planning Act was adopted to require
5 municipal and industrial users with more than 3,000 connections or use of more than 3,000 acre-
6 feet/year to prepare an urban water management plan (UWMP). The UWMP was required to include
7 existing and projected water supplies and demands, water supply allocations, comparison of supplies
8 and demands, water demand management program (conservation), wastewater recycling, and water
9 shortage contingency plans. In 1990, the Water Conservation in Landscaping Act was adopted to
10 develop a model water efficient landscape ordinance. In 2004, Assembly Bill 2717 was adopted to
11 request that the California Urban Water Conservation Council convene a task force and develop a model
12 local water efficient landscape ordinance.

13 In 1990, the Agricultural Water Suppliers Efficient Water Management Practices Act of 1990 (AB 3616)
14 was adopted. This act supported the voluntary implementation of efficient agricultural water
15 management practices and led to the formation of the Agricultural Water Management Council and
16 preparation of Agricultural Water Management Plans that included an evaluation of net benefits of
17 efficient management practices.

18 Legislation adopted in November 2009 as SB7X 7 created a framework for future planning and actions
19 by urban and agricultural water suppliers to reduce California's water use. This bill changed Division 6 of
20 the Water Code to include water use reduction targets and interim targets and plans for both urban and
21 agricultural water suppliers and users, including the following sections, and data reporting methods and
22 frequencies.

- 23 • Section 10608.16 requires that the state achieve a 20-percent reduction in urban per capita water
24 use in California on or before December 31, 2020, and reduce urban per capita water use by at least
25 10 percent on or before December 31, 2015.
- 26 • Section 10608.20 requires that each urban retail water supplier develop urban water use targets
27 and an interim urban water use target by July 1, 2011.
- 28 • Section 10608.48(a) requires that an agricultural water supplier implement specified efficient water
29 management practices on or before July 31, 2012.
- 30 • Section 10608.64 requires that DWR, in consultation with the Agricultural Water Management
31 Council, academic experts, and other stakeholders, develop a methodology for quantifying the
32 efficiency of agricultural water use and report to the legislature by December 31, 2011.

33 The legislation also included the Agricultural Water Management Planning Act that changed the Water
34 Code in Section 10820 to require agricultural water management plans to be prepared by December 31,
35 2012, and updated by on December 31, 2015 and every 5 years thereafter. Water users that do not
36 comply with this requirement would not be eligible for California water grants or loans without
37 indicating compliance. The legislation also stated that agricultural water suppliers with less than 25,000
38 acres irrigated with non-recycled water would not need to comply with these changes to the Water
39 Code unless funding is provided for implementation.

40 The Delta Reform Act included Section 85020(d) to "Promote statewide water conservation, water use
41 efficiency, and sustainable water use" as an objective for management of the Delta. In addition, the

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1 Delta Reform Act modified the Water Code to include the following provisions related to sustainable
2 water supplies.

- 3 • Section 85021 states, “The policy of the State of California is to reduce reliance on the Delta in
4 meeting California's future water supply needs through a statewide strategy of investing in
5 improved regional supplies, conservation, and water use efficiency. Each region that depends on
6 water from the Delta watershed shall improve its regional self-reliance for water through
7 investment in water use efficiency, water recycling, advanced water technologies, local and regional
8 water supply projects, and improved regional coordination of local and regional water supply
9 efforts.”

- 10 • Section 85303 states, “The Delta Plan shall promote statewide water conservation, water use
11 efficiency, and sustainable use of water.”

- 12 • Section 85086(a) instructs the SWRCB to establish an effective system of Delta watershed diversion
13 data collection and public reporting by December 31, 2010. Additional data reporting by surface
14 water diverters and groundwater users were required through modifications in the Water Code by
15 the adoption of SBX 8 and SBX 6, respectively.

16 In addition to state law, several federal laws have been adopted to support water use efficiency with
17 CVP water users. The 1982 Reclamation Reform Act and the 1992 Central Valley Project Improvement
18 Act (Title 34 of Public Law 102-575) included water conservation criteria to develop best management
19 practices and reporting requirements for urban and agricultural water users. The Reclamation
20 Wastewater and Groundwater Studies Feasibility Act of 1992 (Title XVI of Public Law 102-575) provided
21 for the Secretary of the Interior to establish a federal water reclamation, recycling, and reuse program in
22 the 17 western United States where Reclamation provides services and Hawaii, and to conduct research
23 for wastewater reclamation and treatment of impaired surface waters and groundwater.

24 Although, not being conducted in accordance with specific legislation, the SWRCB is currently updating
25 the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary,
26 including considerations related to improved near-term and long-term water use efficiency.

27 **Section 85020(e): Improve water quality to protect human
28 health and the environment consistent with achieving water
29 quality objectives in the Delta**

30 The Porter-Cologne Act is the basic water quality control legislation in California, and is administered by
31 the SWRCB and the Regional Water Quality Control Boards (collectively known as the Water Boards).
32 The Water Boards also implement portions of the federal Clean Water Act related to water quality of
33 waters of the United States in accordance with approval by the U.S. Environmental Protection Agency
34 (USEPA). Water quality requirements are developed by the Water Boards to meet water quality
35 objectives and protect designated beneficial uses. The SWRCB also administers statewide water rights.
36 The SWRCB has historically issued water rights decisions and orders that have modified SWP and CVP
37 operations to protect the Bay and Delta objectives and beneficial uses.

38 The Delta Reform Act included Section 85020(e) to " Improve water quality to protect human health and
39 the environment consistent with achieving water quality objectives in the Delta" as an objective for
40 management of the Delta. In addition, the Delta Reform Act modified the Water Code to include the
41 following provisions related to water quality.

- 1 • Section 85022(d)(6) includes fundamental goals for managing land use in the Delta to "Improve
2 water quality to protect human health and the environment consistent with achieving water quality
3 objectives in the Delta"
- 4 • Section 85302(d)(3) includes measures to promote a more reliable water supply, including
5 "Improving water quality to protect human health and the environment"
- 6 • Section 85302(e)(5) includes subgoals and strategies for restoring a healthy ecosystem in the Delta
7 Plan including "Improve water quality to meet drinking water, agriculture, and ecosystem long-term
8 goals"

9 **Section 85020(f): Improve the water conveyance system and 10 expand statewide water storage**

11 The Delta Reform Act included Section 85020 to "improve the water conveyance system and expand
12 statewide water storage" as an objective for management of the Delta. In addition, the Delta Reform Act
13 modified the Water Code to include the following provisions related to water conveyance and storage.

- 14 • Section 85004 states that the Legislature "finds and declares all of the following:
 - 15 (a) The economies of major regions of the state depend on the ability to use water
16 within the Delta watershed or to import water from the Delta watershed. More than
17 two-thirds of the residents of the state and more than two million acres of highly
18 productive farmland receive water exported from the Delta watershed.
 - 19 (b) Providing a more reliable water supply for the state involves implementation of
20 water use efficiency and conservation projects, wastewater reclamation projects,
21 desalination, and new and improved infrastructure, including water storage and Delta
22 conveyance facilities"
- 23 • Section 85304 states, "Delta Plan shall promote options for new and improved infrastructure
24 relating to the water conveyance in the Delta, storage systems, and for the operation of both to
25 achieve the coequal goals"
- 26 • Section 85320(b)(2)(B) states that the BDCP shall not be incorporated into the Delta Plan unless the
27 BDCP environmental documentation evaluates a " reasonable range of Delta conveyance
28 alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and
29 including further capacity and design options of a lined canal, an unlined canal, and pipelines"
- 30 • Section 85320 (b)(2)(F) states that the BDCP environmental documentation must include a
31 comprehensive review and analysis of "resilience and recovery of Delta conveyance alternatives in
32 the event of catastrophic loss caused by earthquake or flood or other natural disaster"

33 **Section 85020(g): Reduce risks to people, property, and state 34 interests in the Delta by effective emergency preparedness, 35 appropriate land uses, and investments in flood protection**

36 Section 85020 includes "(g) Reduce risks to people, property, and state interests in the Delta by effective
37 emergency preparedness, appropriate land uses, and investments in flood protection" as an objective

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1 for management of the Delta. In addition, SBX7 1 makes other amendments or additions for risk
2 reduction in the following codes:

- 3 • Section 29702 includes “(d) Improve flood protection by structural and nonstructural means to
4 ensure an increased level of public health and safety.”
- 5 • Section 29759 instructs the DPC to prepare the economic sustainability plan, including “(b)(1) Public
6 safety recommendations, such as flood protection recommendations.”
- 7 • Section 85305 states, “(a) The Delta Plan shall attempt to reduce risks to people, property, and state
8 interests in the Delta by promoting effective emergency preparedness, appropriate land uses, and
9 strategic levee investments. (b) The council may incorporate into the Delta Plan the emergency
10 preparedness and response strategies for the Delta developed by the California Emergency
11 Management Agency pursuant to Section 12994.5.”

12 SBX7 1 also identifies possible early actions related to this policy objective, including:

- 13 • Develop and implement a strategy to engage federal agencies (§ 85082) including building off the
14 Interim Federal Action Plan for the California Bay-Delta (December 22, 2009), Section IV.B (pages
15 22-23).
- 16 • Coordinate with and support DWR, in consultation with the U.S. Army Corps of Engineers (Corps)
17 and the Central Valley Flood Protection Board, in preparation of a plan to coordinate flood and
18 water supply operations of the SWP and CVP (§ 85309).
- 19 • Section 85306 states, “The council, in consultation with the Central Valley Flood Protection Board,
20 shall recommend in the Delta Plan priorities for state investments in levee operation, maintenance,
21 and improvements in the Delta, including both levees that are a part of the State Plan of Flood
22 Control and nonproject levees.”

23 **Section 85020(h): Establish a new governance structure with
24 the authority, responsibility, accountability, scientific support,
25 and adequate and secure funding to achieve these objectives**

26 The recently enacted SBX7 1 and the companion bills adopted in 2009 make fundamental changes in the
27 governance structure of the Delta and agencies that deal with the complex interaction of water laws and
28 the Delta ecosystem and Delta as place. It is the intention of the Council to evaluate how those changes
29 work with the old system and to make recommendations for inclusions in the Interim Plan and/or the
30 Delta Plan that help to explain, clarify, and reinforce the important statutory actions.

31 The Act includes major governance reforms, creating the Council as an independent state agency (Wat.
32 Code § 85200) and making it the successor to the California Bay Delta Authority (§ 85034), including a
33 reconstituted Delta Independent Science Board (§ 85080 and 85280), creating a new Delta Conservancy
34 (Pub. Resources Code § 32320), revising the composition and responsibilities of the DPC (§ 29735-
35 29754), and giving the Council responsibility to develop and implement the Delta Plan to guide actions
36 of state and local agencies (Wat. Code § 85300). The Act also assigns responsibilities to the SWRCB (e.g.,
37 § 85086 through 85089), the DFG (e.g., § 85084.5), and the DWR (e.g., § 85085 and 85309) among state
38 agencies. New policies are established for completion of the BDCP (e.g., § 85320, 85321). In other
39 sections, SBX7 1 establishes or reinforces broad state policy, including reducing reliance on the Delta for
40 water supply linked to increased regional self reliance (§ 85021), establishing reasonable use and public

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1 trust as the foundation of state water policy (§ 85023), and requiring use of performance measures in
2 implementing the Delta Plan (§ 85211).

3 These new legal authorities and policies will require consistent, effective effort to launch and sustain.
4 The Council will have to establish procedures and policies for its work, as will the newly created Delta
5 Conservancy. Working relationships will have to be established with other agencies. Areas of
6 overlapping jurisdiction and competencies will have to be sorted out. A specific such example is the
7 geographical overlap of authority in the Suisun Marsh of the existing San Francisco Bay Conservation
8 and Development Commission and the Delta Plan, but many other examples exist with local
9 governments and state agencies. Critically, the Act provides no long-term financing for operations of the
10 Council or the Delta Conservancy, nor increased funding for the DPC, which was assigned additional
11 responsibilities. Equally important, no funding streams are identified for any projects of these entities.

12 The Delta Reform Act includes three interim actions related to this policy objective:

- 13 • Appoint a Delta Independent Science Board (§ 85080).
14 • Develop and implement a strategy to engage federal agencies (§ 85082), including building off the
15 Interim Federal Action Plan for the California Bay-Delta (December 22, 2009), Section I (pages 7-8).
16 • Consult with and support the SWRCB in appointing a Delta Watermaster (§ 85230).

17

1 Appendix E: Strategies and Actions from 2 the Delta Vision Strategic Plan and Other 3 Sources for Consideration by Council

4 Water Code section 85300(a) requires that strategies and actions set forth in the *Delta Vision Strategic*
5 *Plan* and *Delta Vision Committee Implementation Report* be considered by the Council for inclusion in
6 the Delta Plan. During implementation of the Interim Plan, these strategies and actions may provide
7 useful information to the Council. The *Delta Vision Committee Implementation Report*, authored by
8 cabinet secretaries, supported all seven goals of the *Delta Vision Strategic Plan* and all but two of its
9 strategies (Strategy 7.1 regarding the composition and powers of a new Council and Strategy 7.4
10 regarding seeking CZMA status for the Delta Plan were not supported by the committee), SBX7 1
11 contains definitive provisions in both these areas. The Committee did not make any recommendations
12 regarding actions, which are referenced for consideration by the Council in SBX7 1. The strategies and
13 actions from the *Delta Vision Strategic Plan* are listed in this appendix for reference.

14 Additionally, the Act requires submission of plans, proposals, or recommendations from a number of
15 agencies which may include strategies and actions for discretionary consideration by the Council for
16 inclusion in the Delta Plan. As developed, these plans may also inform Council actions under the Interim
17 Plan. If these plans are submitted to the Council after they can reasonably be considered for the first
18 Delta Plan, they would be considered when the Delta Plan is updated.

19 This appendix is not a list of activities approved by the Council, nor an indication that the activities listed
20 will ultimately inform Council actions under the Interim Plan or be included in the Delta Plan.

21 Goals, Strategies, and Actions from the Delta Vision 22 Strategic Plan

23 Goal 1: Legally acknowledge the co-equal goals of restoring the 24 Delta ecosystem and creating a more reliable water supply for 25 California

26 **Strategy 1.1:** Make the co-equal goals the foundation of Delta and water policy making.

27 **Action 1.1.1:** Write the co-equal goals into the California Constitution or into statute.

28 **Action 1.1.2:** Incorporate the co-equal goals into the mandated duties and responsibilities of all
29 state agencies with significant involvement in the Delta.

30 **Action 1.1.3:** Require the achievement or advancement of the co-equal goals in all water,
31 environmental, and other bonds, and operational agreements and water contracts or water
32 rights permits that directly or indirectly fund activities in the Delta.

1 **Goal 2: Recognize and enhance the unique cultural,
2 recreational, and agricultural values of the California Delta as
3 an evolving place, an action critical to achieving the co-equal
4 goals**

5 **Strategy 2.1:** Apply for federal designation of the Delta as a National Heritage Area, and expand the
6 State Recreation Area network in the Delta.

7 **Action 2.1.1:** Apply by 2010 for the designation of the Delta as a federally recognized National
8 Heritage Area.

9 **Action 2.1.2:** Expand by 2010 the State Recreation Area network in the Delta, combining existing
10 and newly designated areas.

11 **Strategy 2.2:** Establish market incentives and infrastructure to protect, refocus, and enhance the
12 economic and public values of Delta agriculture.

13 **Action 2.2.1:** Establish special Delta designations within existing federal and state agricultural
14 support programs.

15 **Action 2.2.2:** Conduct needed research and development for agricultural sustainability in the
16 Delta.

17 **Action 2.2.3:** Establish new markets for innovative agricultural products and enterprises in the
18 Delta.

19 **Strategy 2.3:** Develop a regional economic plan to support increased investment in agriculture,
20 recreation, tourism, and other resilient land uses.

21 **Action 2.3.1:** Charge the Delta Protection Commission with facilitating a consortium of local
22 governments to create a regional economic development plan that addresses agriculture,
23 recreation, tourism, and other innovative land uses.

24 **Action 2.3.2:** Establish special enterprise zones at the major “gateways” to the Delta as part of
25 the economic development plan.

26 **Strategy 2.4:** Establish a Delta Investment Fund to provide funds for regional economic
27 development and adaptation.

28 **Action 2.4.1:** Initiate the Delta Investment Fund with state funding.

29 **Action 2.4.2:** Structure the Fund so that it can accept revenues from federal, state, local, and
30 private sources.

31 **Action 2.4.3:** Place the Fund under the joint management of the Delta Protection Commission
32 and a consortium of local governments.

33 **Strategy 2.5:** Adopt land use policies that enhance the Delta’s unique values, and that are
34 compatible with the public safety, levee, and infrastructure strategies of Goal 6.

35 **Actions:** See Goals 3 and 6 for actions to address this Strategy.

1 **Goal 3: Restore the Delta ecosystem as the heart of a healthy 2 estuary**

3 **Strategy 3.1:** Restore large areas of interconnected habitats—on the order of 100,000 acres—with-in
4 the Delta and its watershed by 2100.

5 **Action 3.1.1:** Increase the frequency of floodplain inundation and establish new floodplains.

6 **Action 3.1.2:** Restore tidal habitats and protect adjacent grasslands and farmlands throughout
7 the Delta, with active near-term pursuit of restoration targets.

8 **Strategy 3.2:** Establish migratory corridors for fish, birds, and other animals along selected Delta
9 river channels.

10 **Action 3.2.1:** Improve physical habitats along selected corridors by 2015.

11 **Action 3.2.2:** Provide adequate flows at the right times to support fish migrations, and reduce
12 conflicts between conveyance and migration, by 2012.

13 **Action 3.2.3:** Immediately use the Central Valley Flood Protection Plan to identify areas of the
14 San Joaquin River within and upstream of the Delta where flood conveyance capacity can be
15 expanded.

16 **Action 3.2.4:** Using the National Heritage Area and regional economic development planning
17 efforts, begin immediately to identify ways to encourage recreational investment along the key
18 river corridors.

19 **Strategy 3.3:** Promote viable, diverse populations of native and valued species by reducing risks of
20 fish kills and harm from invasive species.

21 **Action 3.3.1:** Reduce fish kills in Delta pumps by instituting diversion management measures by
22 2009, implementing near-term conveyance improvements by 2015, and relocating diversions.

23 **Action 3.3.2:** Control harmful invasive species at existing locations by 2012, and minimize or
24 preclude new introductions and colonization of new restoration areas to non-significant levels.

25 **Strategy 3.4:** Restore Delta flows and channels to support a healthy Delta estuary.

26 **Action 3.4.1:** Charge the Department of Fish and Game with completing recommendations for
27 in-stream flows for the Delta and high priority rivers and streams in the Delta watershed by
28 2012 and for all major rivers and streams by 2018.

29 **Action 3.4.2:** Develop and adopt management policies supporting increased diversion during
30 wet periods, a joint effort of the State Water Resources Control Board, the Department of Fish
31 and Game, the Department of Water Resources, and related federal agencies, to be completed
32 by 2012.

33 **Action 3.4.3:** Adopt new State Water Resources Control Board requirements by 2012 to increase
34 spring Delta outflow. Commence implementation no later than 2015.

35 **Action 3.4.4:** Adopt new State Water Resources Control Board requirements by 2012 to
36 reintroduce fall outflow variability no later than 2015.

37 **Action 3.4.5:** Increase San Joaquin River flows between February and June by revising the State
38 Water Resources Control Board's Vernalis flow objectives and the state and federal water

1 projects' export criteria. Revise the flow objectives and criteria no later than 2012 and
2 commence implementation as soon as possible thereafter.

3 **Action 3.4.6:** Provide short-duration San Joaquin River pulse flows in the fall starting by 2015.

4 **Action 3.4.7:** Reconfigure Delta waterway geometry by 2015 to increase variability in estuarine
5 circulation patterns.

6 **Strategy 3.5:** Improve water quality to meet drinking water, agriculture, and ecosystem longterm
7 goals.

8 **Action 3.5.1:** Require the Central Valley Regional Water Quality Control Board to conduct three
9 actions:

10 _ Immediately re-evaluate wastewater treatment plant discharges into Delta waterways and
11 upstream rivers and set discharge requirements at levels that are fully protective of human
12 health and ecosystem needs.

13 _ Adopt by 2010 a long-term program to regulate discharges from irrigated agricultural lands.

14 _ Review by 2012 the impacts of urban runoff on Delta water quality and adopt a plan to reduce
15 or eliminate those impacts.

16 **Action 3.5.2:** Relocate as many Delta drinking water intakes as feasible away from sensitive
17 habitats and to channels where water quality is higher.

18 **Action 3.5.3:** Establish Total Maximum Daily Load programs by 2012 for upstream areas to
19 reduce organic and inorganic mercury entering the Delta from tributary watersheds.

20 **Action 3.5.4:** Begin comprehensive monitoring of water quality and Delta fish and wildlife health
21 in 2009.

22 **Goal 4: Promote statewide water conservation, efficiency, and 23 sustainable use**

24 **Strategy 4.1:** Reduce urban, residential, industrial, and agricultural water demand through improved
25 water use efficiency and conservation, starting by achieving a statewide 20 percent per capita
26 reduction in water use by 2020.

27 **Action 4.1.1:** Improve statewide water use efficiency and conservation.

28 **Action 4.1.2:** Reduce urban per-capita water demand through specific recommended actions.

29 **Action 4.1.3:** Ensure the most efficient use of water in agriculture.

30 **Strategy 4.2:** Increase reliability through diverse regional water supply portfolios.

31 **Action 4.2.1:** Modify the Water Recycling Act of 1991 to add a statewide target to recycle on the
32 order of 1.5 million acre-feet of water annually by 2020.

33 **Action 4.2.2:** Enact legislation now to encourage local water agencies to at least triple the
34 current statewide capacity for generating new water supplies through ocean and brackish water
35 desalination by 2020.

36 **Action 4.2.3:** Request that the State Water Resources Control Board set goals by 2015 for
37 infiltration and direct use of urban storm water runoff throughout the Delta watershed and its
38 export areas.

1 **Action 4.2.4:** Request agencies to ensure that accurate and timely information is collected and
2 reported on all surface water and groundwater diversions in California by 2012.

3 **Action 4.2.5:** Require that all water purveyors develop an integrated contingency plan by 2015
4 in case of Delta water supply curtailments or drought.

5 **Action 4.2.6:** Establish a regulatory framework that encourages efficient and integrated
6 management of water resources at local, regional, and statewide levels, with a focus on specific
7 actions.

8 **Goal 5: Build facilities to improve the existing water
9 conveyance system and expand statewide storage, and operate
10 both to achieve the co-equal goals**

11 **Strategy 5.1:** Expand options for water conveyance, storage, and improved reservoir operations.

12 **Action 5.1.1:** Direct the Department of Water Resources and other allied agencies to further
13 investigate the feasibility of a dual conveyance facility, building upon the Bay Delta Conservation
14 Plan effort.

15 **Action 5.1.2:** Direct the Department of Water Resources, the Department of Fish and Game, and
16 other allied agencies to recommend the size and location of new storage and conveyance
17 facilities by the end of 2010. Develop a long-term action plan to guide design, construction, and
18 operation, and present the recommendation and plan to the California Delta Ecosystem and
19 Water Council for a consistency determination.

20 **Action 5.1.3:** Complete substantial development and construction of new surface and
21 groundwater storage and associated conveyance facilities by 2020, with the goal of completing
22 all planned facilities by 2030.

23 **Strategy 5.2:** Integrate Central Valley flood management with water supply planning.

24 **Action 5.2.1:** Change the operating rules of existing reservoirs to incorporate and reflect
25 modern forecasting capabilities.

26 **Action 5.2.2:** Require the Department of Water Resources to immediately create a flood bypass
27 along the lower San Joaquin River.

28 **Action 5.2.3:** Request that the Department of Water Resources encourage greater infiltration as
29 part of watershed management planning.

30 **Goal 6: Reduce risks to people, property, and state interests in
31 the Delta by effective emergency preparedness, appropriate
32 land uses, and strategic levee investments**

33 **Strategy 6.1:** Significantly improve levels of emergency protection for people, assets, and resources.

34 **Action 6.1.1:** Complete a Delta-wide regional emergency response plan by 2010 that establishes
35 legally binding regional coordination.

36 **Action 6.1.2:** Immediately begin a comprehensive series of emergency management and
37 preparation actions.

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1 **Action 6.1.3:** Conduct a comprehensive analysis of the costs and benefits of highway protection
2 strategies, and adopt a policy based on its findings by 2012.

3 **Action 6.1.4:** Complete a comprehensive analysis of the costs and benefits of infrastructure
4 protection strategies. Adopt a policy based on its findings by 2012.

5 **Strategy 6.2:** Discourage inappropriate land uses in the Delta region.

6 **Action 6.2.1:** Immediately strengthen land use oversight of the Cosumnes/Mokelumne floodway
7 and the San Joaquin/South Delta lowlands.

8 **Action 6.2.2:** Immediately strengthen land use oversight for Bethel Island, the city of Isleton,
9 and Brannan-Andrus Island.

10 **Action 6.2.3:** Immediately prepare local plans for these five at-risk locations within the primary
11 zone: Walnut Grove (including the residential area on Grand Island), Locke, Clarksburg,
12 Courtland, and Terminous.

13 **Action 6.2.4:** Immediately form a landowner consortium to create a new land use strategy that
14 fosters recreation, increases habitat, reverses subsidence, sequesters carbon, improves handling
15 of dredged material, and continues appropriate agriculture on Sherman, Twitchell, and Jersey
16 Islands.

17 **Strategy 6.3:** Prepare a comprehensive long-term levee investment strategy that matches the level
18 of protection provided by Delta levees and the uses of land and water enabled by those levees.

19 **Action 6.3.1:** Require the Department of Water Resources, in cooperation with local
20 Reclamation Districts and other agencies, to develop a comprehensive plan for Delta levee
21 investments.

22 **Action 6.3.2:** Prioritize the \$750 million appropriated by Proposition 1E and Proposition 84
23 funds for the improvement of Delta levees, including in legacy towns.

24 **Action 6.3.3:** Require those preparing the comprehensive levee plan to incorporate the Delta
25 Levees Classification Table to ensure consistency between levee designs and the uses of land
26 and water enabled by those levees.

27 **Action 6.3.4:** Continue the existing Department of Water Resources levee subventions program
28 until the comprehensive levee plan is completed.

29 **Action 6.3.5:** Vest continuing authority for levee priorities and funding with the California Delta
30 Ecosystem and Water Council to ensure a cost-effective and sustainable relationship between
31 levee investments and management of the Delta over the long term.

32 **Goal 7: Establish a new governance structure with the
33 authority, responsibility, accountability, science support, and
34 secure funding to achieve these goals**

35 **Strategy 7.1:** Establish a new California Delta Ecosystem and Water Council as a policy making,
36 planning, regulatory, and oversight body. Abolish the existing California Bay-Delta Authority,
37 transferring needed CALFED programs to the California Delta Ecosystem and Water Council.
38 Establish a new Delta Conservancy to implement ecosystem restoration projects, and increase the
39 powers of the existing Delta Protection Commission.

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1 **Action 7.1.1:** Establish a California Delta Ecosystem and Water Council to replace the Bay-Delta
2 Authority and take over CALFED programs.

3 **Action 7.1.2:** Establish a California Delta Conservancy as early as possible in the 2009 legislative
4 session.

5 **Action 7.1.3:** Strengthen the Delta Protection Commission through legislation.

6 **Action 7.1.4:** Require the California Delta Ecosystem and Water Council to create a Delta Science
7 and Engineering Program and a Delta Science and Engineering Board by September 1, 2009.

8 **Action 7.1.5:** Improve the compliance of diversions water use with all applicable laws.

9 **Strategy 7.2:** Require the California Delta Ecosystem and Water Council to prepare a California Delta
10 Ecosystem and Water Plan to ensure sustained focus and enforceability among state, federal, and
11 local entities.

12 **Action 7.2.1:** Develop a legally enforceable California Delta Ecosystem and Water Plan.

13 **Action 7.2.2:** Institutionalize adaptive management through updates to the California Delta
14 Ecosystem and Water Plan every five years.

15 **Action 7.2.3:** Charge the Delta Science and Engineering Board, with support of the Delta Science
16 and Engineering Program, to develop a science-based adaptive management program to provide
17 for continued learning of, and adaptation to, actions implemented by state, federal, and local
18 agencies in the Delta.

19 **Strategy 7.3:** Finance the activities called for in the California Delta Ecosystem and Water Plan from
20 multiple sources.

21 **Action 7.3.1:** Enact a series of principles regarding design of financing into legislation authorizing
22 the California Delta Ecosystem and Water Council.

23 **Action 7.3.2:** Establish a base of revenues outside the state General Fund for the work of the
24 California Delta Ecosystem and Water Council, the Delta Conservancy, the Delta Protection
25 Commission, and related core activities of the Department of Fish and Game, the Department of
26 Water Resources, and the State Water Resources Control Board.

27 **Action 7.3.3:** Find new revenue sources beyond the traditional bond funds or public allocations.

28 **Strategy 7.4:** Optimize use of the CALFED Record of Decision and Coastal Zone Management Act to
29 maximize participation of federal agencies in implementation of the California Delta Ecosystem and
30 Water Plan.

31 **Action 7.4.1:** Use existing authority under the CALFED Record of Decision to maximize
32 participation of federal agencies in implementation of the *Delta Vision Strategic Plan* until the
33 California Delta Ecosystem and Water Plan is completed.

34 **Action 7.4.2:** Prepare the California Delta Ecosystem and Water Plan according to guidelines of
35 the Coastal Zone Management Act, in order to achieve ongoing federal consistency.

1 Other Plans and Submissions Required under 2 SBX7 1

- 3 SBX7 1 requires completion of the following plans or proposals and their submission to the Council.
4 Where the statute provides a date for completion it is included here.

<u>Code Section Basis for Consideration by the Delta Stewardship Council</u>	<u>Plan, Proposal, or Other Submission</u>
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Public Resources Code section 29759	Economic sustainability plan to be prepared by the Delta Protection Commission no later than July 1, 2011
Public Resources Code section 32376	Strategic plan to be completed by the Delta Conservancy "...within two years of hiring an executive officer..."
Water Code section 85086	"...for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan...the State Water Resources Control Board is charged to develop flow criteria "...for the Delta ecosystem necessary to protect public trust resources." Scheduled to be determined within nine months of the enactment of this provision and transmitted to the Council within an additional 30 days. (ten months from November 2009 is September 2010)
Water Code section 85301	"A proposal to protect, enhance, and sustain the unique cultural, historical, recreational, agricultural, and economic values of the Delta as an evolving place, in a manner consistent with the coequal goals." To be prepared by the Delta Protection Commission, with specified contributions by the Department of Parks and Recreation and the Department of Food and Agriculture. No date for completion specified.
Water Code section 85309	The Department of Water Resources, developed in consultation with the United States Army Corps of Engineers and the Central Valley Flood Protection Board, proposal to coordinate flood and water supply operations of the State Water Project and the federal Central Valley Project. No date for completion

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specified.

Water Code section 85320

The Bay Delta Conservation Plan (BDCP), under specified conditions. No date for completion.

Water Code section 85305(b) (“...emergency preparedness and response strategies...developed by the California Emergency Management Agency pursuant to Section 12994.5.”)

The Act also includes provisions under which the Council can incorporate other plans or other documents which may include strategies or actions relevant to the Delta Plan, including the sections to the left.

Water Code section 85307 (b) “...local plans for flood protection.” (c) “...in consultation with the Department of Transportation...effects of climate change and sea level rise on the three state highways that cross the Delta.” (d) “...in consultation with the State Energy Resources Conservation and Development Commission and the Public Utilities Commission...actions to address the needs of Delta energy development, energy storage, and energy distribution.”

Water Code section 85350 (“...other completed plans...to the extent that the other plans promote the coequal goals.”